

**To:** BLM\_WO\_302[blm\_wo\_302@blm.gov]; BLM\_WO\_310[blm\_wo\_310@blm.gov]; BLM\_WO\_320[blm\_wo\_320@blm.gov]; BLM\_WO\_350[blm\_wo\_350@blm.gov]; John Broderick[jbroderi@blm.gov]; Karen Mouritsen[kmourits@blm.gov]; Kendra Nitta[kendra.nitta@sol.doi.gov]; Michael Nedd[mnedd@blm.gov]; Timothy Spisak[tspisak@blm.gov]  
**From:** Merrill, Adam  
**Sent:** 2017-05-19T17:26:53-04:00  
**Importance:** Normal  
**Subject:** Fwd: Public Lands News: Tough budget due next week; advisory boards shut down  
**Received:** 2017-05-19T17:29:46-04:00  
[P1017May19.pdf](#)  
[P1017May19.doc](#)

----- Forwarded message -----

From: **Public Lands News** <[james@publiclandnewsletter.com](mailto:james@publiclandnewsletter.com)>  
Date: Fri, May 19, 2017 at 7:01 AM  
Subject: Public Lands News: Tough budget due next week; advisory boards shut down  
To: [james@publiclandnewsletter.com](mailto:james@publiclandnewsletter.com)

Dear Public Lands News Subscriber:

May 19, 2017: Attached is the current issue of the newsletter Public Lands News (Volume 42 Number 10), in .doc format and in PDF format. Below are the headlines. We thank you for reading Public Lands News.

The Editors

*In the attached issue. . .*

\* LATE APPROPRIATIONS REQUEST PUTS HILL UNDER GUN. FY 2018 budget expected on 23rd. Will post reduction details. Appropriators must move fast.

Page 1

\* DOI HALTS ADVISORY PANELS, EXPLANATION ASKED. More than 200 groups shut down, including 38 BLM RACs. Zinke starting over. Dems are upset.

Page 4

\* SOME CRITICISM OF DOI NUMBER TWO. Cantwell posts objections to Bernhardt at Interior. A few names circulated for NPS boss, little elsewhere.

Page 5

\* SENATE VOTE LEAVES METHANE RULE IN PLACE. CRA resolution to revoke rule fails in 51-to-49 vote. Rule critics turn to courts, Dol review.

Page 7

\* MONUMENTS REVIEW INPUT IMMEDIATE. Critics, backers of Obama actions in Utah offer early input. May 26 deadline. Zinke takes a tour.

Page 9

\* DOI LEADS FIGHT AGAINST ENERGY RULES. Now that Congress has not acted on resolutions to repeal them. Could be a long, hard admin slog.

Page 11

\* CONSERVATIVES ENTER CRA LAWSUIT. Pacific Legal taking on enviro lawsuit on law unconstitutionality. Says resolution enactment proves it.

Page 12

\* API OFFERS COMPLEX POSITION ON ROYALTY RULE. Although it backs repeal of rule, API says it accepts central tenet of indexing, sometimes      Page 14

\* IBLA decisions.

Page 15

\* NOTES.

Page 16

\* BOXSCORE OF LEGISLATION.

Page 17

\* FEDERAL PARKS & RECREATION ADDENDUM.

Page 18

Public Lands News is published by Resources Publishing Co., P.O. BOX 41320, Arlington, VA 22204. EIN 52-1363538. Phone (703) 553-0552. FAX (703) 553-0558. E-mail [james.b.coffin@verizon.net](mailto:james.b.coffin@verizon.net). Website: <http://www.plnfpr.com>.

--  
**Adam Merrill**  
**Geologist**

**Washington Office**  
**Division of Solid Minerals**  
**(202) 912-7044**

**Public Lands News**  
**Volume 42 Number 10**  
**May 19, 2017**

---

Public Lands News is published by Resources Publishing Co., P.O. BOX 41320, Arlington, VA 22204. EIN 52-1363538. Phone (703) 553-0552. FAX (703) 553-0558. E-mail [james.b.coffin@verizon.net](mailto:james.b.coffin@verizon.net). Website: <http://www.publiclandsnews.com>.

---

*In this issue. . . .*

**Late approps request puts Hill under gun.** FY 2018 budget expected on 23rd. Will post reduction details. Appropriators must move fast.

Page 1

**DoI halts advisory panels, explanation asked.** More than 200 groups shut down, including 38 BLM RACs. Zinke starting over. Dems are upset.

Page 4

**Some criticism of DoI number two.** Cantwell posts objections to Bernhardt at Interior. A few names circulated for NPS boss, little elsewhere.

Page 5

**Senate vote leaves methane rule in place.** CRA resolution to revoke rule fails in 51 to 49 vote. Rule critics turn to courts, DoI review.

Page 7

**Monuments review input immediate.** Critics, backers of Obama actions in Utah offer early input. May 26 deadline. Zinke takes a tour.

Page 9

**DoI leads fight against energy rules.** Now that Congress has not acted on resolutions to repeal them. Could be a long, hard admin slog.

Page 11

**Conservatives enter CRA lawsuit.** Pacific Legal taking on enviro lawsuit on law unconstitutionality. Says resolution enactment proves it.

Page 12

**API offers complex position on royalty rule.** Although it backs repeal of rule, API says it accepts central tenet of indexing, sometimes Page 14

**IBLA decisions.**

Page 15

**Notes.**

Page 16

**Boxscore of legislation.**

Page 17

**Federal Parks & Recreation addendum.**

Page 18

**FY 2018 approps request imminent; hearings compressed**

As soon as President Trump signed a fiscal year 2017 appropriations bill into law (PL 115-31) May 5, attention turned to his anticipated, detailed fiscal 2018 budget request.

The fiscal 2018 request, expected May 23, will put flesh on an outline of a budget recommendation that the administration published March 16. That recommendation would famously slash Interior Department spending by 12 percent.

House and Senate appropriators are under the gun to act fast. Said an aide to Senate Appropriations Committee Chairman Thad Cochran (R-Miss.), "Chairman Cochran awaits the President's detailed budget request, which will allow subcommittees to begin hearings for fiscal year 2018. An active hearing schedule is taking shape, but a mark-up timetable has not been determined."

While some subcommittees have held preliminary hearings based on the March 16 outline, they will be forced to compress their schedules over the next month. The Senate subcommittee on Interior appropriations, for one, has held no hearings.

Customarily, a President submits a detailed budget request in early February, giving the House and Senate time to write a Congressional budget and appropriators time to hold hearings in March and April. Mark-ups usually follow in June. But because of the transition in administrations the detailed Trump budget is not expected until next week.

Meanwhile, the fiscal 2017 appropriations law roughly maintains fiscal 2016 levels for most public lands and park and recreation programs.

PL 115-31 does give BLM an extra \$22 million for resource management and the Park Service an extra \$29 million for operations. But it also cuts spending for federal land acquisition by \$38 million.

**Fiscal 2018 budget:** The Trump administration March 16 proposed a \$1.5 billion reduction in Interior Department spending for fiscal year 2018, down to \$11.6 billion from a level of \$13.1 billion. The Office of Management and Budget, our sources say, intends to lay out the details May 23.

Despite the overall decrease the stripped-down, 62-page budget request would increase spending on energy development onshore and offshore at unspecified levels.

The budget would also maintain wildfire spending in the Forest Service and the Interior Department at the 10-year average of \$2.4 billion. The administration did not suggest a shift of emergency wildfire spending out of appropriations, as both Republican and Democratic Congressional leaders recommend.

To reach its 12 percent decrease in spending for the Interior Department the Trump administration would eliminate programs such as National Heritage Areas.

The Trump administration's proposed Interior Department cut is in line with the President's philosophy of transferring the business of federal agencies to state and local governments and the private sector. By program:

**Energy:** The request is all in on energy development, saying it, "Strengthens the Nation's energy security by increasing funding for DoI programs that support environmentally responsible development of energy on public lands and offshore waters. Combined with administrative reforms

already in progress, this would allow DoI to streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources."

*Agency operations:* For land management agencies the budget "streamlines operations while providing the necessary resources for DoI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety."

*Wildfire:* The administration says its request, "Fully funds wildland fire preparedness and suppression activities at \$2.4 billion, 100 percent of the 10-year average for suppression operations, to ensure the resources necessary to protect life and property."

*PILT:* The administration takes on the sacrosanct payments-in-lieu of taxes (PILT) program, saying it, "Supports counties through discretionary funding for the (PILT) program at a reduced level, but in line with average funding for PILT over the past decade."

**Fiscal 2017 numbers:** Here are a few numbers in the final fiscal 2017 appropriations law, compared to fiscal 2016:

**BLM RESOURCE MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

**PAYMENTS-IN-LIEU OF TAXES:** The fiscal 2017 law contains an appropriation of \$465 million, compared to a fiscal 2016 appropriation of \$452 million.

**WILD HORSES AND BURROS:** The fiscal 2017 law contains an appropriation of \$80.6 million, the same as a fiscal 2016 appropriation of \$80.6 million.

**ENERGY AND MINERALS:** The fiscal 2017 law contains an appropriation of \$172.8 million, compared to a fiscal 2016 appropriation of \$166 million.

**NATIONAL LANDSCAPE CONSERVATION SYSTEM:** The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

**NATIONAL FOREST SYSTEM:** The fiscal 2017 law contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

**FOREST PRODUCTS:** The fiscal 2017 law contains \$367.8 million for this line item, which includes timber sales, compared to a fiscal 2016 appropriation of \$359.8 million.

**FWS REFUGE MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$483.9 million, compared to a fiscal 2016 appropriation of \$481.4 million.

**LWCF FEDERAL:** The fiscal 2017 law contains an appropriation of \$188.8 million, compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: BLM is to receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service is to receive \$50 million compared to \$58.5 million; the Park Service

is to receive \$42 million compared to \$53.7 million; and the Forest Service is to receive \$54.4 million compared to \$64.4 million.

**Fiscal 2017 riders:** Appropriators killed most amendments/riders the House and the Senate Appropriations Committee approved last year. Topping the list of deleted amendments was a House proposal to forbid the designation of any national monument in specific counties in eight states – Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine.

Also lopped off the bill were riders that would have: (1) forbid the implementation of an Office of Natural Resources Revenue rule on coal, oil and gas royalties; (2) forbid the implementation of an EPA rule regulating oil and gas methane emissions; (3) forbid the implementation of an Obama administration policy governing the greater sage-grouse under the Endangered Species Act; and (4) forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act.

But PL 115-31 does contain two important amendments:

**BLM foundation:** The measure authorizes for the first time a Bureau of Land Management Foundation. Foundation donors will be able to specify what programs should receive their money. On the list are wild horses and burros, national conservation areas, recreation resources and so on. By the same token donors could direct the distribution of their contributions to the reclamation of abandoned hard rock mining and energy sites.

Other land management agencies already have similar foundations, including the National Park Foundation, the National Fish and Wildlife Foundation, and the National Forest Foundation. Like those foundations, a BLM entity would have the authority to operate like a nonprofit group and collect and distribute money.

**Eastern Alaska plan:** The measure directs BLM to revisit a new plan released by BLM January 6 that covers 6.5 million acres of eastern interior Alaska. Among other things the plan designates 1 million acres of the region as areas of critical environmental concern that will limit mining and other uses.

Says the report accompanying the fiscal 2017 bill, “The Bureau is instructed to review recently executed land management plans to determine whether decisions to retain certain mineral closures are consistent with Federal law, including the Alaska National Interest Lands Conservation Act and the Federal Land Policy Management Act, including a determination whether sufficient notice was provided prior to the creation of Areas of Critical Environmental Concern.”

### Interior halts agency advisory groups; may start over

The Interior Department confirmed this week that it has suspended the work of more than 200 advisory panels, including 38 BLM resource advisory councils, known as RACs.

A department spokesman described the suspension as a strategy to more fully gather input on public land policy. “To maximize feedback from these boards and ensure their compliance with the Federal Advisory Committee Act and the President’s recent executive orders, the Department is currently

reviewing the charter and charge of each Board/Advisory Committee," said spokesman Paul Ross.

"This review process necessitates the temporary postponement of advisory committee meetings."

He added, "As the Department concludes its review in the weeks ahead, agencies will (post) notice (of) future meetings to ensure that the Department continues to get the benefit of the views of local communities in all decision-making on public land management."

The department did not share with us any overarching policy directive from Secretary of Interior Ryan Zinke. Indeed, the suspension first became public when BLM officials notified RAC members last week that the RACs had been shut down.

On May 9 the Center for Biological Diversity sent a Freedom of Information request to the Interior Department demanding all documents attendant to the review, "including and/or mentioning any member's removal, suspension, dismissal, nonrenewal of terms, and/or termination from any Interior Department scientific advisory board, committee, group and/or panel, as referenced in media outlets from January 20, 2017 to the date of this search."

Eight Democratic senators are getting into the game. They wrote Zinke May 11, "We are very concerned about this news and would like an answer as to why the RAC meetings were postponed during the BLM's review of all advisory boards and committees. It is critical that local voices, including RACs, have the opportunity to provide input and take part in the process at all times, not just when those local voices align with the Administration or a large special interest."

Sens. Ron Wyden and Jeff Merkley, both Oregon Democrats, were the lead signatories.

Environmentalists see an ulterior motive in the suspensions, when paired with Zinke's tour of national monument in Utah this past week. "Cancelling these meetings while holding a one-sided listening tour across Utah sends a clear signal that Secretary Zinke intends to make decisions behind closed doors and not through an open and transparent public process," said Greg Zimmerman, deputy director of the Center of Western Priorities.

In Utah conservationists and native groups said Zinke last week met primarily with critics of the designation of a Bears Ears National Monument by the Obama administration and a grand Staircase-Escalante National Monument by the Clinton administration.

The BLM advisory councils consist of 15 citizen members who meet four times per year. The members represent a wide range of interests from local officials to commodity industries to conservationists.

Said Zimmerman, "This announcement runs absolutely counter to the Trump Administration's commitment to listen to rural communities. At the very time they're discussing major land management changes, eliminating monuments and increasing the pace of development they're also choosing to shut out stakeholders."

But Interior's Ross said the opposite that Zinke will listen to the public. "The Secretary is committed to restoring trust in the Department's decision-making and that begins with institutionalizing state and local input and ongoing collaboration, particularly in communities surrounding public lands," he said.

The suspension of the advisory boards follows up on the leak to the press last month of an internal BLM priority agenda. That agenda calls for an acceleration in the processing of applications for permit to drill for oil and gas.

It is no secret that the Trump administration has made domestic development of energy a centerpiece of its overall agenda, particularly on the public lands. As an initial step in that agenda the administration with the support of the Republican Congress has begun to undo Obama administration restrictions on energy development.

On March 28 President Trump directed the Interior Department to terminate a coal-leasing moratorium and to begin work on reversing oil and gas regulations governing hydraulic fracturing, methane emissions, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Secretary of Interior Ryan Zink immediately terminated the coal-leasing moratorium and ordered BLM to get the ball rolling on reversing the oil and gas regulations. (See related particle page 11.)

### Senate holds hearing on DoI number two; agency heads?

A handful of Senate Democrats expressed deep reservations May 18 about President Trump's nomination of former Interior Department Solicitor and current lobbyist David L. Bernhardt as deputy secretary of Interior, the number two spot.

Whether those reservations, expressed at a confirmation hearing hosted by the Senate Energy Committee, are sufficient to defeat his nomination on the Senate floor remains to be seen. Back in 2009 the Senate affirmed Bernhardt's nomination as Interior Department Solicitor by voice vote.

The Trump administration has been notoriously slow in making subcabinet political nominations. Although Secretary of Interior Ryan Zinke and Secretary of Agriculture Sonny Perdue have both been nominated and confirmed, none of their top lieutenants have.

President Trump nominated Bernhardt to the Interior deputy position on April 28. He has yet to make a nomination for Under Secretary of Agriculture for Natural Resources.

Bernhardt's nomination drew criticism from ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) She objects to Bernhardt's long record of representing corporations in legal disputes in areas that he will now oversee. "I have to say at the outset that I have concerns about Mr. Bernhardt's nomination," she said, before outlining his past work in the department and private industry.

Committee chairman Sen. Lisa Murkowski (R-Alaska) and other Republicans solidly backed Bernhardt's nomination. Said Murkowski, "I believe Mr. Bernhardt is an excellent choice for deputy secretary . . . He understands the management of federal lands and how it affects those who live those lands, the implication of federal policy and the balance between conservation and development.

Bernhardt was employed most recently as a member of the law firm Brownstein Hyatt Farber Schreck LLP, where he represented energy and mining companies and the Westlands Water District in California.

The environmental group Public Employees for Environmental Responsibility (PEER) charged Bernhardt with tinkering with scientific reports about the effects of oil and gas development in Arctic National Wildlife Refuge (ANWR). Bernhardt was an aide to then Secretary of Interior Gale Norton in 2001.

"The Senate needs to thoroughly investigate his role in this blatant political manipulation of science before considering his nomination," said PEER Executive Director Jeff Ruch.

Here are the acting heads of natural resource agencies and a few names circulated as possible directors/chiefs:

**BLM:** Former BLM Eastern States Director Michael Nedd is serving as acting director. Utah House Rules Chairman Michael E. Noel (R) had been high on the list of possible nominees for BLM director, but that possibility has faded.

Noel has been a leading champion of transfer of federal lands to the State of Utah, but Zinke has championed federal retention of public lands.

**Forest Service:** Tom Tidwell, long-time chief during the Obama administration, is expected to stay on for the immediate future while Purdue organizes his department and the Trump administration nominates a deputy secretary for natural resources.

**NPS:** Even before former director Jonathan B. Jarvis left office with the Obama administration the Park Service had made it clear that his assistant Mike Reynolds would serve as acting director in the early days of the Trump administration.

A few names of possible nominees as director have been bandied about including David Mihalic, former superintendent of Yosemite National Park, and Rob Wallace, former Hill staffer. Wallace once served as assistant director of NPS and most recently has worked for i2Capital, an advisory company.

**FWS:** Jim Kurth has been serving as acting director, succeeding former director Dan Ashe. Kurth had served as the service's deputy director for operations for the last two years.

In a related development Zinke has appointed Vincent DeVito as his counselor for energy policy. Senate confirmation is not required. DeVito was most recently a partner in the law firm Bowditch & Dewey, LLP in Boston.

Surprise Senate vote leaves BLM methane rule in place

In a stunning reversal for the Trump administration the Senate May 10 backed an Obama administration regulation governing oil and gas methane emissions from the public lands.

The Senate by a narrow 51-to-49 vote refused to consider a resolution (HJ Res 36) that would have paved the way for the repeal of the BLM rule of Nov. 15, 2016. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

Now, opponents of the BLM rule must rely on a laborious administrative rewrite/removal of the regulation, or on the federal courts. Said Kathleen Sgamma, president of the Western Energy Alliance, "(A) district court judge expressed grave doubts about BLM's authority to regulate air quality, and we and the states will continue to press that point. We'll also be working closely with the Department of the Interior on reviewing and rescinding this rule."

Sen. Maria Cantwell (D-Wash.), who led the Senate opposition to HJ Res 36, encouraged the Interior Department to implement the BLM rule as is. "What is now clear is that the BLM Methane Rule has the force of law and the Secretary of the Interior, the Attorney General, and the President should enforce it," she said. "The Department of the Interior cannot just decide to ignore methane pollution."

Environmentalists sounded triumphant. "In recent months, thousands of Americans asked the Senate to stand up for clean air and against the oil lobby, and their efforts were successful today," said Wilderness Society President Jamie Williams.

In the Senate debate Sen. John Hoeven (D-N.D.) repeated the oil and gas industry charge that the BLM rule is unnecessary because EPA and the states already regulate methane emissions.

"For those wondering why methane emissions aren't already regulated, there is a simple explanation: They are," he said. "Under the Clean Air Act, the Environmental Protection Agency, in partnership with individual states, is tasked with regulating air quality, which includes methane emissions."

Not only that, said Hoeven, "It is working nationally, methane emissions from the oil and gas industry have been on the decline for a number of years. So we are already actively working at the state level under a regulatory regime where states have primacy to spend, authorized by EPA, to reduce natural gas flaring."

Hoeven didn't mention that the Trump administration has taken steps to do away with a key EPA methane emissions rule. On April 20 EPA stayed a deadline for compliance with its rule for 90 days beyond a June 3, 2017, deadline.

The EPA rule, which would govern methane emissions from future oil and gas operations, would not only set emission limits but also require operators to find and repair leaks.

The BLM rule limits the rate of flaring, requires frequent inspections by operators and requires the replacement of outdated equipment, among other things.

Cantwell countered Hoeven by contending that the BLM rule would prevent substantial amounts of methane pollution from escaping into the atmosphere with restrictions not in the EPA rule.

"Even worse than the taxpayer issue, though, is that wasted natural gas harms public health. . . It creates ozone and smog," she said. "It also can make people sick. This pollution worsens asthma, emphysema, and increases the risk of premature death. It releases toxins, like benzene, that cause cancer. And the methane, the main constituent of the natural gas, is 25 times more powerful at trapping heat than carbon dioxide."

Sen. Martin Heinrich (D-N.M.) also argued that the rule would prevent the loss of royalties to states and federal taxpayers from escaped methane that lease operators don't pay royalties on. "A recent report found that New Mexico taxpayers have lost out on over \$42 million of royalty revenues since the year 2009 - \$42,728,949 to be exact," he said. That March 2014 report was prepared by ICF International, a global research firm.

Hoeven in turn countered that the rule itself would cost industry much more. "This rule has been calculated to cost up to \$279 million each year. So the cost of this rule is \$279 million a year - a duplicative rule. That is in addition to the red tape. BLM estimates that the rule will impose an additional 82,000 hours of paperwork," he said.

In the Senate action Sen. John McCain (R-Ariz.) provided the key and unexpected - margin against the rule. Republican Sens. Susan Collins (R-Me.) and Lindsey Graham (R-S.C.) also voted against. The vote was unexpected because Senate Majority Leader Mitch McConnell (R-Ky.) almost always has his ducks in a row in major votes.

The Senate vote came just before the CRA deadline for repeal of Obama administration regulations. The CRA gave the House and Senate just 60 working days from the time regulations were enacted to vote on reversals, or May 11. The law allowed Congress to address only those Obama administration regulations issued after June 13, 2016. Now time has run out on a half-dozen other proposed resolutions of revocation floating around Congress.

Those failed resolutions addressed Fish and Wildlife Service oil and gas regulations; National Park Service oil and gas resolutions; Office of Natural Resources Revenue energy royalty rules; BLM site security rules; and BLM oil and gas measurements rules. (See related article page 11.)

Although the Trump administration has begun a review of Obama administration energy rules, it may take years to replace/revise them with new regulations.

Congress did use the CRA to approve two resolutions that President Trump signed, revoking a BLM planning rule and a Fish and Wildlife Service rule governing hunting in Alaska.

The May 10 Senate action on the methane rule brings to the forefront a lawsuit from the oil and gas industry in opposition to the rule, as Sgamma mentioned above. Industry argues in the lawsuit, as Hoeven did, that BLM has no authority to regulate emissions; only EPA does.

In that suit on January 16 Judge Scott W. Skavdahl in U.S. District Court in Wyoming refused for now to halt implementation of the rule. He held that industry plaintiffs had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility.

Said the judge, "The Court questions whether the 'social cost of methane' is an appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority."

In a separate lawsuit the Center for Biological Diversity is questioning the constitutionality of the CRA itself. The April 20 suit said the CRA violates the Constitutional separation of powers precept by preventing a federal agency from carrying out its legal duty. That is, once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one. (See related article page 12.)

Pacific Legal Foundation has intervened in the center's lawsuit, arguing in favor of the constitutionality of the law. The foundation says the passage of the resolution by the House and the Senate and the signing of the resolution by the President, by definition, "fully complied with the Constitution's bicameralism and presentment requirements."

### DOI monument review touches off intense debate

The Trump administration will take public comments until May 26 on its review of the designation of 22 recent national monuments and five marine monuments, the Interior Department formally announced May 11.

The comment period is sure to produce a furious wave of comments, pro and con; indeed it already has. Much of the focus will be on a Bears Ears National Monument and a Grand Staircase Escalante National Monument, both in Utah.

In a trip through Utah this week Secretary of Interior Ryan Zinke gave mixed signals about what action(s) he would recommend. "Some of the monuments are, I don't want to say universally, but certainly widely, supported and accepted," he said according to the *Salt Lake Tribune*. "The Bears Ears is not widely supported or accepted in the state of Utah."

At the same time he rejected the notion that the five Indian tribes that pushed for the Bears Ears designation were taken in by environmentalists. "I think they're smart, capable, passionate, and have a deep sense of tie to their culture and want to preserve it," Zinke said, according to the *Tribune*.

Zinke's tour was organized by the office of Utah Gov. Gary Herbert (R-Utah) and, the *Tribune* said, allowed limited availability to critics of the monument review and to the public at large. Former Secretary of Interior Sally Jewell did open herself up to the public at large on the run up to the designation of Bears Ears on Dec. 28, 2016.

The Utah Congressional delegation has pushed vigorously for a revocation or revision of the 1.3 million-acre Bears Ears Monument. Said Sen. Mike Lee (R-Utah) after President Trump announced the review, "I commend President Trump for beginning a review of past monument designations and I'm confident that after that review some of them, including the recent Bears Ears designation, will be rescinded or altered to better conform with the original intention of the Antiquities Act."

On May 8 The Wilderness Society struck back, charging that a repeal or shrinking of Bears Ears and/or Grand Staircase would be devastating for small businesses in the area. Said Matt Keller, senior director of conservation with The Wilderness Society, "These mom and pop shops are making Main Streets strong and driving growth of rural communities. Yet Trump is trying every trick in the book to give gifts to his friends in the extractive industry, selling out our natural and cultural wonders for short term profit."

Keller was backed up by Kristina Waggoner, vice president of the Boulder-Escalante Chamber of Commerce. "This executive order is an attack on my community's economic future," she said. "Visitors come from across our country and the world to marvel at our colorful sandstone cliffs cascading across Utah's largest network of slot canyons. These visitors are key to the success of local businesses."

The "X" factors in the debate are sportsmen and the outdoor industry; they have thus far campaigned widely and loudly in support of national monuments in the West. More than 100 hunting and fishing businesses wrote Congress May 9 and said, "We are writing in support of the Antiquities Act of 1906 and to request that it be used responsibly and in a way that supports the continuation of hunting and fishing in America."

The Interior Department review comment period began May 11 and lasts through May 26. Comments may be sent to <http://www.regulations.gov> and enter "DOI 2017 0002" in the Search bar and click "Search."

In the May 11 *Federal Register* notice the Interior Department listed the 22 onshore national monuments it will review plus the five marine national monuments. The notice provides the locations of the monuments, the dates they were designated and their acreage. The notice is here: <https://www.gpo.gov/fdsys/pkg/FR-2017-05-11/pdf/2017-09490.pdf>.

President Trump signed an executive order April 26 directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996. Trump did not take the ultimate step and say he had the authority to revoke those designations.

The 100,000-acre limit applies to 21 national monuments in the West, plus an 87,500-acre Katahdin Woods and Waters National Monument in Maine and five huge marine monuments. That's 27 total.

The Trump-Zinke review could set the stage for Trump to at least reduce the size of the national monuments, if not outright revoke their designations. It directs Secretary of Interior Ryan Zinke to report back to the White House within 120 days with recommendations for "Presidential actions, legislative proposals, or other actions consistent with law."

Zinke sounded most interested in reducing the size of monuments, not so much the outright revocation of them. "Historically, the Act calls for the

President to designate the 'smallest area compatible with proper care and management of the objects to be protected,'" he said. "Despite this clear directive 'smallest area' has become the exception and not the rule."

For the Bears Ears National Monument in southern Utah the executive order asks for a response from Zinke within 45 days.

Said Trump in a ceremony at the Interior Department, "The previous administration used a 100-year-old law known as the Antiquities Act to unilaterally put millions of acres of land and water under strict federal control - have you heard about that? - eliminating the ability of the people who actually live in those states to decide how best to use that land."

A national debate has erupted about whether or not the President has authority to unilaterally revoke or revise a national monument designation. In late March the influential American Enterprise Institute (AEI) published a report that argues Trump has unlimited authority to do so. However, that report disagrees with a 1938 U.S. Attorney General opinion and a Congressional Research Service report of last fall that doubt Trump enjoys such authority.

President Trump's executive order is available at:  
<https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>.

### As CRA rule repeal deadline expires, agencies take over

Now that Congress has failed to repeal Obama administration fossil fuels regulations, an Interior Department review of the rules takes center stage.

Numerous energy industry groups have made it clear that in the wake of a Senate vote that left in place a BLM methane emissions rule they expect the administration to revise or terminate that rule administratively.

Said API Upstream and Industry Operations Group Director Erik Milito after the Senate vote May 10, "While it is disappointing that the Senate did not act to correct the rule more quickly, we look forward to working with the administration on policies that continue our commitment to safely produce the energy that Americans rely on, help consumers, create jobs, strengthen our national security, and protect our environment."

In addition to the methane rule the Interior Department review, kicked off by an order from Secretary Ryan Zinke March 29, is looking at rules governing hydraulic fracturing, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Under Zinke's timetable those reviews by BLM, the Fish and Wildlife Service, and the Park Service should have been completed by the end of April and sent to him. In the review President Trump directed the Interior Department to identify "burdensome" regulations and, if deemed necessary, to "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules."

Zinke did take unilateral action March 29 to undo a coal-leasing moratorium imposed by former Secretary of Interior Sally Jewell. In other words the administration does not consider the prior work done on an EIS by the Obama administration demands continuation of that work, or an EIS to back a reversal.

Environmentalists immediately filed a lawsuit arguing that the Trump administration should prepare an EIS before cancelling the moratorium.

Separately, the Office of Natural Resources Revenue (ONRR) has taken two steps to stop and replace an Obama administration coal, oil and gas royalty rule. On February 22 ONRR postponed implementation of the Obama rule and on April 4 it proposed outright repeal of the rule, combined with a solicitation of comments on a new proposed rule.

In its July 1, 2016, royalty rule the Obama regulations replaced an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

Here are the four Obama fossil fuels regulations now under review by the Interior Department

**BLM methane emissions rule:** The Senate May 10 backed an Obama administration regulation governing oil and gas methane emissions from the public lands. (See separate article page 7.)

The Senate by a narrow 51-to-49 vote refused to consider a resolution (H.J. Res. 36) that would have paved the way for the repeal of the BLM rule of Nov. 15, 2016. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

That leaves in place the Zinke review launched on March 29.

And it also leaves in place a lawsuit against the rule from the Western Energy Alliance and other energy industry entities. In that suit on January 16 Judge Scott W. Skavdahl in U.S. District Court in Wyoming refused for now to halt implementation of the rule. He held that industry plaintiffs had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility.

**BLM hydraulic fracturing rule:** This BLM rule of March 26, 2015, was not subject to a Congressional repeal resolution because it was issued before the deadline for filing such resolutions.

The rule would have companies (1) validate well integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

On June 21, 2016, Judge Skavdahl blocked implementation of the rule, saying BLM had no authority to issue the regulation, period. He said

Congress had forbidden both BLM and EPA from regulating non-diesel hydraulic fracturing.

**FWS oil and gas rule:** On January 30 Rep. Kevin Cramer (R-N.D.) and five of his colleagues introduced a resolution (HJ Res 45) to revoke a Fish and Wildlife Service (FWS) oil and gas management rule of Nov. 14, 2016. That final rule would have FWS tighten its oversight of oil and gas operations within wildlife refuges. The rule went into effect Dec. 14, 2016.

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs.

FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

The Trump executive order directs BLM to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

**NPS oil and gas rule:** On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016.

The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

Currently, 12 of the 408 National Park System units host oil and gas operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

The Trump executive order directs BLM to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

### Conservatives counter conservationists on CRA legality

A conservative legal group is seeking to intervene in an environmentalist lawsuit challenging the Constitutionality of the Congressional Review Act (CRA). Congress has used the law to revoke 13 Obama administration regulations, including two important public lands rules.

The group, the Pacific Legal Foundation, argues that the lawsuit should be dismissed because, among other things, the environmentalists are flatly wrong in their assertion that the act violates the separation of powers.

The immediate target of the lawsuit from the Center for Biological Diversity is a CRA resolution that President Trump signed into law April 3 (PL 115-20). It revokes a rule limiting hunting and fishing in national wildlife refuges in Alaska.

The conservation foundation argues the passage of the resolution by the House and the Senate and the signing of the resolution by the President, by definition, "fully complied with the Constitution's bicameralism and presentment requirements."

Said foundation attorney Jonathan Wood, "Under our Constitution, administrative agencies only have power that Congress chooses to delegate to them. Congress is free to limit its delegation of power as it sees fit. What Congress gives, it can take away, or curtail."

The lawsuit from the Center for Biological Diversity contends the CRA violates the Constitutional separation of powers precept by preventing a federal agency from carrying out its legal duty. That is, once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

The lawsuit argues, "By nullifying the Refugees Rule, and prohibiting any future substantially similar rules, 5 U.S.C. § 801(b) (2), without amending any of Interior's existing rulemaking authorities, Congress expanded its own power at the expense of the executive branch. Such Congressional overreaching undermines the separation of powers that must be maintained between the legislative and executive branches, in violation of the U.S. Constitution."

That is, Congress has delegated to the Fish and Wildlife Service (FWS) i.e. the executive branch - broad powers to manage the nation's wildlife refuges. By constraining those powers, the lawsuit maintains, Congress is interfering with the authority of FWS (the executive branch) to manage the refuges.

At issue in Congress's revocation resolution is an Aug. 8, 2016, FWS rule that pre-empted a State of Alaska policy authorizing "intensive predator management" in wildlife refuges in Alaska. The FWS rule curbed a state policy governing the hunting of bears and wolves.

In addition to the Alaska hunting rule Congress also revoked a BLM planning 2.0 rule (PL 115-12) on March 27. BLM published the rule on Dec. 12, 2016.

Of importance, the Senate May 10 rejected a resolution that targeted another controversial BLM public lands rule that governs methane emissions from oil and gas projects. BLM completed the rule on Nov. 15, 2016. The House approved the resolution (HJ Res 36) February 23 by a vote of 221-to-191 but the Senate voted against 51-to-49. (See related article page 7.)

Time has now run out on a half-dozen other resolutions targeting public lands regulations. That's because the CRA only gave the House and Senate 60 working days to act on regulations, or, according to the Congressional schedule, May 9. The law allowed Congress to address only those Obama administration regulations issued after June 13, 2016.

The CRA requires only a simple majority of both the House and Senate, circumventing a Senate filibuster. Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

Although environmentalists objected strenuously to the Alaska hunting resolution, their cause was hampered by the support for the resolution of their hunting and fishing colleagues in the conservation community.

The FWS regulation held that the State of Alaska may not regulate predators in 77 million acres of federal wildlife refuges unless state

regulations are based on sound science. The rule did not affect subsistence hunting by Alaska Natives.

**API favors some O&G royalty indexing; two states sue**

The Trump administration's delay in implementing an Obama administration energy royalty rule is running into mixed reactions.

The American Petroleum Institute (API) for one fully backs the delay of the Obama rule because it objects to authority for the Office of Natural Resources Revenue (ONRR) to impose after-the-fact penalties on lessees.

But if ONRR were to write a new rule to replace the Obama rule, API does favor one central Obama provision, albeit in a modified format indexing.

"API members conceptually support the option to choose index pricing for unprocessed and processed gas and strongly recommended to ONRR that the option be available to arm's-length sales as they too have the same tracing and unbundling issues as those lessees with non-arm's-length sales," API told ONRR earlier this month. "Unfortunately, the index pricing terms implemented in the 2017 Valuation Rule result in an arbitrary premium for the privilege and ignore how oil and gas actually flows and is sold."

In its July 1, 2016, rule the Obama regulations replaced an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

The Trump administration has taken two steps to stop and replace the Obama rule. On February 22 ONRR postponed implementation of the Obama rule and on April 4 it proposed outright repeal of the rule, combined with a solicitation of comments on a new proposed rule. That is the solicitation to which API responded.

**States go to court:** Meanwhile, the States of California and New Mexico have filed a lawsuit against the delay in implementation of the Obama rule. They argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

"An agency cannot 'postpone' the effective date of a rule when that effective date has already come and gone," said the states in a lawsuit filed in U.S. District Court for Northern California. "Further, the legal basis on which the agency relied for the postponement, Section 705 of the Administrative Procedure Act, does not apply to rules that have already gone into effect. ONRR's attempt to delay the Rule after it became effective is facially invalid, and constitutes an attempted end-run around the APA's notice-and-comment requirements."

In their lawsuit the states say the postponement of the Obama rule "will impact the amount of royalties received by the States on the extraction of these resources." The complaint is available at:  
[https://www.oag.ca.gov/system/files/attachments/press\\_releases/Valuation%20Rule%20Complaint%20Filed%2004.26.2017.pdf](https://www.oag.ca.gov/system/files/attachments/press_releases/Valuation%20Rule%20Complaint%20Filed%2004.26.2017.pdf)?

Indeed, in opposing the postponement the Sierra Club and the Earthjustice law firm said states and taxpayers could lose significant amounts of money. "Returning to flawed and outdated procedures that were easily gamed by regulate companies will cost states and taxpayers approximately \$70 million to \$80 million every year," the groups told ONRR.

But the State of Montana Attorney General Tim Fox is more sanguine about the postponement because he said the Obama rule would discourage coal development and cost the state jobs and income. "In particular, the 2017 Valuation Rule's expansion of the default provisions are of concern as they were certain to have had a chilling effect on the coal industry," he said.

In their comments the oil and gas industries objected to the Obama rule because they said it established a default provision that allows ONRR to establish valuation when an operator does not play by the rules. "The default provision undermines the certainty of even a lessee's arm's-length sales prices as value and creates the risk that ONRR may impose a higher royalty value, with corresponding late payment interest, many years after production and initial payment," said API in its comments to ONRR.

Exactly what the Trump administration has in mind for a new rule is not clear. For the time being a Bush administration rule is back in place.

The Western Organization of Resource Councils (WORC) said ONRR should delay work on a new rule until repeal of the Trump rule is decided.

"This rulemaking appears to be premature. By simultaneously seeking comment on whether or not to repeal the Valuation Rule and seeking comment on what to replace the rule with, commenters and other members of the public - including WORC - are left to provide substantive comments on hypothetical or imaginary alternative scenarios, never defined by your department," WORC told ONRR.

Congress has attempted to get in the game, with Rep. Scott Tipton (R-Colo.) introducing a resolution in February to repeal the Obama rule under a Congressional Review Act. However, neither the House nor the Senate acted on the resolution and the Congressional Review Act deadline for repealing rules expired last week.

## IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.blnfprr.com/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

**Subject:** O&G lease suspensions.

**BLM decision:** BLM will offer suspended lessees a choice - accept new stipulations or have leases cancelled.

**Oil and gas lessees:** BLM has no authority to retroactively change stipulations or cancel leases.

**IBLA decision:** Appeals dismissed, BLM has yet to make appealable decisions.

**Case identification:** *International Petroleum, LLC, Jack Energy, LLC.* 190 IBLA 130. Decided May 4, 2017. Nine pages. Appeal from BLM decisions offering two oil and gas lessees a choice between accepting new lease stipulations or facing cancellation of their leases. UTU 81771, *et al.*

**IBLA argument:** IBLA Administrative Judge Silvia M. Riechel dismissed this appeal involving 55 suspended oil and gas leases because BLM had not handed down a decision yet. The appellants objected to a BLM letter giving them two choices: accept new stipulations for their leases so as to continue to develop the leases or reject the

stipulations and have BLM cancel their leases. But Riechel dismissed the appeals because she said BLM had not reached a final decision yet. The bureau had simply offered the lessees a choice. "There is therefore no bureau decision authorizing or prohibiting an action that affects the lessees' rights or interests. Accordingly, we dismiss the appeals," held Riechel. The appellants had argued that under the Mineral Leasing Act BLM does not have authority to retroactively impose new lease stipulations, or, alternatively, cancel leases. The subject leases are in the Uintah National Forest in Utah and the Forest Service had developed the stipulations. When environmentalists sued on the issuance of the leases in the first place, BLM said it should redo its environmental reviews, leading to the proposed new stipulations.

**Subject:** Oil and gas unit modification.

**BLM decision:** BLM will require the elimination of nonparticipating lands from a unit agreement at a five-year deadline.

**Appellant unit operator:** BLM should not have eliminated three leases from the unit.

**IBLA decision:** Affirmed BLM, elimination of the three leases is a separate issue.

**Case identification:** *Willsource Enterprise, LLC.* 190 IBLA 138. Decided May 9, 2017. Eleven pages. Appeal from a decision by the Deputy Director, Colorado State Office of BLM, who upheld a Colorado State Office Order that required Appellant to describe lands eliminated from the Willow Creek Unit by the express terms of the Willow Creek Unit Agreement. SDR CO-12-10.

**IBLA argument:** IBLA Administrative Judge James K. Jackson ruled strictly on the issue of elimination of nonparticipating lands in this complex case involving an oil and gas unit agreement in Colorado. At issue for BLM and judge Jackson was a June 2012 order from BLM for unit operator Willsource Enterprise, LLC to describe nonparticipating lands in the unit agreement at the five-year point of the unit. By regulation at that point the nonparticipating lands are to be removed from the unit. But the appellant Willsource also objected to a separate June 2012 BLM decision eliminating nonparticipating leases from the unit. But Jackson said only the order was at issue here and the BLM rules were clear on eliminating nonparticipating land.

## Notes

**GAO faults BLM on O&G monitoring.** The Government Accountability Office (GAO) said last week that BLM's records on exceptions to environmental rules granted to oil and gas operators are so spotty that the bureau may not be meeting its management responsibilities. GAO said that a survey of 42 field offices showed that less than half tracked exemptions from environmental protection rules in leases. In addition GAO said BLM doesn't have a consistent policy for considering requests for exemptions. The exemptions are grants that allow such things as drilling when wildlife are present. Said Rep. Raúl M. Grijalva (D-Ariz.) for whom the report was prepared, "We can't make it this easy for companies extracting public resources to ignore their environmental responsibilities. The American people have almost no way to know when BLM simply winks and gives oil and gas drillers a green light." In response to the GAO report BLM said it would revise its monitoring policies. "The agency is currently updating its Automated Fluid Minerals Support System to provide for greater transparency and accountability, ensure consistent data quality, standardize the permit process, and provide the vehicle for addressing specific shortcomings identified in the report," Acting BLM Director Michael Nedd wrote GAO. The GAO report, *Oil and Gas Development: Improved Collection and Use of Data Could Enhance BLM's Ability to Assess and Mitigate Environmental Impacts*, is available at: <http://www.gao.gov/products/GAO-17-307>.

**O&G leasing deferred in California.** BLM has agreed to hold off on oil and gas leasing on one million acres in California until it revises a resource management plan. The settlement struck by BLM and environmental groups settles a lawsuit that said BLM failed to consider the impact of

hydraulic fracturing in environmental documents. BLM has issued no leases from public lands in California since 2013. "Our hope is that this settlement puts the final nail in the coffin for BLM's illegal practice of rubberstamping fracking in California without environmental review," said Earthjustice attorney Greg Loarie, who represented the groups. "Fracking has no place in California's clean, renewable energy future."

**Coal lease PRLA retirement bill in.** Rep. Ben Ray Lujan (D-N.M.) introduced a bipartisan bill (HR 2402) May 8 that authorizes BLM to retire 21,000 acres of coal preference right lease applications (PRLAs). In return the holder of the potential leases, Ark Coal Company, would receive \$134 million in bidding credits on future coal leases. Ark would have five years to use the bidding credits. Ark's applications lie in an area of northern New Mexico that BLM does not now want developed. The House Natural Resources Committee approved a predecessor bill on March 10, 2016. Cosponsors include three Republicans Lynn Cheney (R-Wyo.), Doug Lamborn (R-Colo.) and Scott Tipton (R-Colo.)

**Pebble Mine Alaska reversal?** EPA announced an agreement with a mining company May 12 that may open the way for a massive gold and copper operation in Alaska 15 miles from Lake Clark National Park and Preserve. In Feb. 27, 2014, the Obama administration barred construction of the mine under the Clean Water Act, holding the mine would sully streams and Bristol Bay. The Obama EPA ruled even before the company filed permit requests. The Pebble Limited Partnership immediately filed suit. Now the Trump EPA in a settlement agreement with Pebble Limited said it will revisit the Clean Water Act permit. That alarmed the National Parks Conservation Association. "Our members of Congress designated Lake Clark National Park and Preserve to protect a portion of the Bristol Bay ecosystem's health and productivity," said Jim Adams, Alaska regional director for the association. "However, such protections could be compromised by mining activity upstream and near the park's boundary. NPCA believes such threats to wild salmon and the people and wildlife who depend on them do not belong in the headwaters of Bristol Bay and upstream of our national park." The area could contain as much as \$120 billion in gold.

## Conference Calendar

### MAY

20-23. **Association of Consulting Foresters of America National Conference** in Lake Tahoe, Nev. Contact: Association of Consulting Foresters of America, 732 North Washington St., Suite 4-A, Alexandria, VA 22314-1921. (703) 548-0990. <https://www.acf-foresters.org>.

21-24. **National Sporting Goods Association Management Conference** in Scottsdale, Arizona. Contact: National Sporting Goods Association, 1601 Feehanville Drive, Suite 300, Mt. Prospect, IL 60056-6035. (847) 296-6742. <http://www.nsga.org>.

### JUNE

11-14. **International Right-of-Way Association International Education Conference** in Anchorage, Alaska. Contact: International Right-of-Way Association, Pacifica Harbor Business Center, Suite 220, 19750 S. Vermont Ave., Torrance, CA 90502-1144. (310) 538-0233. <http://www.irwaonline.org>.

21-23. **Independent Petroleum Association of America mid-year Meeting**, in Laguna Niguel, Calif. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857-4722. <http://www.ipaa.org>.

26-28. **Western Governors' Association Annual Meeting** in Whitefish, Mont. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

26-29. **Outdoor Retailer Summer Market** in Salt Lake City, Utah. Contact [www.outdoorretailer.com/summer-market](http://www.outdoorretailer.com/summer-market).

**JULY**

12-15. **National Cattlemen's Beef Association Summer Meeting** in Denver. Contact: National Cattlemen's Beef Association, 9110 East Nichols Avenue Suite 300 Centennial, CO 80112. (303) 694-0305. <http://www.beef.org>

20-22. **63nd Annual Rocky Mountain Mineral Law Institute** in Santa Fe, N.M. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

21-24. **National Association of Counties Annual Conference** in Franklin County, Ohio. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

## **Federal Parks & Rec**

### **Addendum to Public Lands News**

May 19, 2017

- \* FY 2018 money request due; greens ask for help
- \* Infrastructure bill has lots of fans, no money
- \* Most gains in rec economy report from methodology
- \* Notes
- \* Monuments (See Public Lands News article)

### **FY 2018 budget on the cusp, greens make an early plea**

As soon as President Trump signed a fiscal year 2017 appropriations bill into law (PL 115-31) May 5, attention turned to his anticipated detailed fiscal 2018 budget request.

The fiscal 2018 request, expected May 23, will flesh out a sketch of a budget recommendation that the administration published March 16. That recommendation would famously slash Interior Department spending by 12 percent.

House and Senate appropriators are under the gun. As we report in the related *Public Lands News* article on page one, Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) anticipates a greatly compressed hearing schedule.

Meanwhile, 49 senators from both parties wrote the Senate Appropriations Committee May 15 and asked for continued support for the Land and Water Conservation Fund (LWCF), including federal land acquisition, state grants and a Forest Legacy program. The lead signatories were Sen. Richard Burr (R-N.C.) and Jeanne Shaheen (D-N.H.)

"We are writing to express our strong support for the (LWCF) and Forest Legacy Program," the senators wrote. "As you begin the process of drafting the Fiscal Year 2018 Interior, Environment, and Related Agencies Appropriations bill, we respectfully request that you allocate at least enacted level funding to this program to honor and continue the commitment to outdoor access for all Americans."

Separately, a huge alliance of conservation groups May 9 asked appropriators to at least maintain fiscal 2017 conservation spending levels for fiscal 2018. Groups including the National Parks Conservation Association and the National Recreation and Park Association deplored proposed reductions in the Trump budget outline of May 16, including a 75 percent cut in the Land and Water Conservation Fund.

They then told House and Senate Appropriations Committee leaders, "We also request this preservation of funding because of the cumulative impact of years of constrained allocations on environmental and public health programs and agencies. Just taking the FY10 enacted levels and adjusting for inflation, the FY17 level is already a 10% cut."

Of note, both the senators and the conservationists ask for level funding for the programs, a departure from past requests for substantial spending increases.

Customarily, a President submits a detailed budget request in early February, giving the House and Senate time to write a Congressional budget and appropriators time to hold hearings in March and April. But because of the transition in administrations the detailed Trump budget is not expected until next week.

Meanwhile, the fiscal 2017 appropriations law roughly maintains fiscal 2016 levels for most public lands, park and recreation programs.

PL 115-31 does give BLM an extra \$29 million for Park Service operations and an extra \$22 million for BLM resource management. But it also cuts spending for federal land acquisition by \$38 million.

**Fiscal 2018 budget:** The Trump administration's proposed 12 percent cut for the Interior Department follows his administration's philosophy of transferring the business of federal agencies to state and local governments and the private sector. By program:

**NPS operations:** The request says it, "Ensures that the National Park Service assets are preserved for future generations by increasing investment in deferred maintenance projects. Reduces funds for other DoI construction and major maintenance programs, which can rely on existing resources for 2018."

**LWCF:** The request says it, "Reduces funding for lower priority activities, such as new major acquisitions of Federal land. The Budget reduces land acquisition funding by more than \$120 million from the 2017

annualized CR level and would instead focus available discretionary funds on investing in, and maintaining, existing national parks, refuges and public lands."

Assuming the "2017 annualized level" is based on the fiscal 2016 final appropriation for LWCF the Trump administration would decrease land acquisition from \$247 million to \$127 million.

**Partnerships:** To make up for lost appropriations in part, the budget says it, "Leverages taxpayer investment with public and private resources through wildlife conservation, historic preservation, and recreation grants. These voluntary programs encourage partnerships by providing matching funds that produce greater benefits to taxpayers for the Federal dollars invested."

**Fiscal 2017 numbers:** Here are a few fiscal 2017 appropriations numbers in PL 115-31, compared to fiscal 2016:

**LWCF FEDERAL:** The fiscal 2017 law contains an appropriation of \$188.8 million, compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: the Bureau of Land Management (BLM) is to receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service (FWS) is to receive \$50 million compared to \$58.5 million; the Park Service is to receive \$42 million compared to \$53.7 million; and the Forest Service is to receive \$54.4 million compared to \$64.4 million.

**LWCF STATE:** The fiscal 2017 law contains an appropriation of \$110 million, or the same as the \$110 million in fiscal 2016.

**PARK SERVICE OPERATIONS:** The fiscal 2017 law contains an appropriation of \$2.425 billion, or \$29 million more than the fiscal 2016 appropriation of \$2.396 billion.

**CENTENNIAL CHALLENGE GRANTS:** The fiscal 2017 law contains an appropriation of \$20 million, or \$5 million more than the \$15 million in fiscal 2016.

**PARK SERVICE RECREATION AND PRESERVATION:** The fiscal 2017 law contains an appropriation of \$62.6 million, the same as a fiscal 2016 appropriation of \$62.6 million.

**NATIONAL HERITAGE AREAS:** The fiscal 2017 law contains an appropriation of \$19.8 million, the same as a fiscal 2016 appropriation of \$19.8 million.

**PARK SERVICE CONSTRUCTION:** The fiscal 2017 law contains an appropriation of \$209.4 million, compared to a fiscal 2016 appropriation of \$193 million.

**PARK SERVICE HISTORIC PRESERVATION:** The fiscal 2017 law contains an appropriation of \$80.9 million, compared to a fiscal 2016 appropriation of \$65.4 million.

**SAVE AMERICA'S TREASURES:** The fiscal 2017 law contains an appropriation of \$5 million, compared to no money in fiscal 2016.

**STATE WILDLIFE CONSERVATION GRANTS:** The fiscal 2017 law contains an appropriation of \$82.6 million, compared to a fiscal 2016 appropriation of \$60.6 million.

**NATIONAL FOREST SYSTEM:** The fiscal 2017 law contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

**FOREST SERVICE RECREATION:** The fiscal 2017 law contains an appropriation of \$264.6 million, just over the fiscal 2016 appropriation of \$261.7 million.

**FOREST SERVICE TRAILS:** The fiscal 2017 law contains an appropriation of \$77.5 million, the same as a fiscal 2016 appropriation of \$77.5 million.

**FOREST LEGACY:** The fiscal 2017 law contains an appropriation of \$62.3 million, the same as a \$62.3 million appropriation in fiscal 2016.

**BLM RESOURCE MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

**BLM RECREATION MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$71.7 million, compared to a fiscal 2016 appropriation of the same, \$69.5 million.

**NATIONAL LANDSCAPE CONSERVATION SYSTEM:** The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

**FWS REFUGE MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$483.9 million, compared to a fiscal 2016 appropriation of \$481.4 million.

## **Infrastructure bill has lots of fans, but no money yet**

In fits and starts the House and Senate are beginning to address the possibility of a big infrastructure bill this year.

Most recently, on May 16 and 17 the Senate Environment and Public Works (EPW) Committee held hearings on where to get money to pay for a bill and what to do about the nation's roads.

Money is still the big problem, if President Trump and Congress are to put together a trillion-dollar initiative. The early betting had held Congress would use a combination of repeal of the ObamaCare health program and tax reform to supply the money. But both of those initiatives for the moment are at best problematic.

At an EPW hearing on money May 17 Los Angeles Mayor Eric Garcetti put in a plug for a U.S. Conference of Mayors proposal for a \$1 trillion infrastructure plan. It includes \$259.2 million in surface transportation projects.

At bottom, said Garcetti, chair of the conference's Infrastructure Task Force, federal money is a top priority. "But for the U.S. to have a robust infrastructure we all envision, and to be competitive at the global stage, a significant amount of new federal funding is necessary. This is a must," he said.

EPW subcommittee on Transportation Chairman Jim Inhofe (R-Okla.) was noncommittal on where the money should come from at the May 16 hearing. "Though not all ideas will work everywhere, all options should be on the table and we should incentivize our non-federal partners to pursue them," he said.

The easy part of a trillion-dollar infrastructure program is identifying the projects. The hard part is finding the money for them.

Of really big importance President Trump, who campaigned on a trillion-dollar infrastructure program, is expected to roll out a fiscal year 2018 budget request May 23 that will outline his recommendations for paying the bill.

From the beginning Trump has trumpeted private-public partnerships. His plan is expected to propose \$200 billion in public investments with the rest paid for from tax incentives.

Last week Sen. Ron Wyden (D-Ore.), ranking Democrat on the Senate Finance Committee, put a shot across the Trump private-public partnership plan's bow, calling for more federal spending and less private spending.

He wrote Secretary of Treasury Steven Mnuchin May 11, "I am no opponent of private investment in infrastructure - with proper oversight on the right kinds of projects, private sector expertise can help accelerate the delivery of high quality public infrastructure. But (public-private partnerships) are not a magical solution to a massive, long-running problem - especially if they are only used to shift costs by levying tolls."

Wyden has signed on to a trillion-dollar Senate Democratic infrastructure proposal that includes \$210 billion for road construction (presumably with some money going to trails and recreation facilities). In addition the Democrats would set aside \$20 billion for public lands and Indian infrastructure, not just for roads.

Say the Senate Democrats, "With this investment of federal funding we will support construction, maintenance and restoration projects at the four Federal land management agencies." Those agencies are NPS, the Forest Service, the Bureau of Land Management, and the Fish and Wildlife Service.

As most players know the problem with infrastructure programs is money. For decades various administrations and Congressional leaders from both parties have sought revenues for surface transportation, with limited success. On Dec. 4, 2015, President Obama did sign into law (PL 114-94) a surface transportation bill that provides outdoor programs with more than \$850 million per year for five years.

The House and Senate generated that legislation only after identifying "gimmicky" funding sources beyond the Highway Trust Fund, which is barely contributing half of the needed \$300 billion.

So now comes the Trump administration with its far broader and far more ambitious infrastructure program. Once again the Highway Trust Fund is expected to help out, but most observers believe Congress will rely mostly on tax reform revenues, such as repatriation from domestic companies operating overseas.

If and when an infrastructure bill is put together, it holds the potential for significant park and recreation assistance.

**NPS Legacy Act:** For instance, four senators led by Sen. John Portman (R-Ohio) introduced legislation (S 751) March 28 that would establish an ambitious fund that would grow to as much as \$500 million per year for Park Service maintenance.

The money would be drawn from revenues from mineral development and would not be subject to appropriations. However, House and Senate Appropriations Committees would have to sign off on annual priority project lists submitted by NPS.

**Recreation industry proposal:** The recreation industry in February asked Congress to include a recreation title in any infrastructure legislation it develops this year, with an emphasis on private investment.

The industry representatives, organized as the Outdoor Recreation Industry Roundtable (ORIR), is calling on Congress to:

- (1) embrace private investments such as those that have in the past paid for the construction of Park Service lodges and national forest ski resorts;
- (2) allocate infrastructure bank investments to recreation projects for lodging, marinas, campgrounds, etc.;
- (3) invest revenues from federal recreation fees in projects; and
- (4) approve more public-private initiatives such as the Park Service Centennial Challenge program, which matches private contributions to the national parks with federal appropriations

ORIR members include the National Ski Areas Association, the National Marine Manufacturers Association, the International Snowmobile Manufacturers Association, the American Sportfishing Association and the Outdoor Industry Association, to name a few.

### **Huge gains in rec economy come mostly from methodology**

As we duly noted in the last issue, the contribution of outdoor recreation to the nation's economy has jumped by \$243 billion in the last few years, according to the Outdoor Industry Association.

But that increase isn't attributable so much to more outdoor recreation spending per capita as it is to changes in methodology in the report, according to a representative of the association.

That is, the researchers added several recreational pursuits that were not in a 2013 report.

"The report includes spending on additional outdoor activities, such as horseback riding, skateboarding, scuba diving, running (three-plus miles) and surfing, that adds to the overall spending on outdoor recreation in the new study," said Cory Combs of the Sunshinesachs public relations firm.

In addition researchers included entrance fees and recreational event spending to the total.

Still, even without those additions recreational spending increased over the last five or so years. "If you omit the additional activities and account for inflation since 2011, spending has grown 2.2 percent annually since the previous report," said Combs.

That 2.2 percent increase was driven in part because "in 2016, Americans were taking more vacations due to the lowest gas prices in a decade," he said.

Whatever the computation outdoor recreation has hit the big time as a contributor to the national economy.

When the Outdoor Industry Association published a landmark report in 2013 on the impact of outdoor recreation on the economy, it was a game-

changer. Republican and Democratic Congressmen and state officials all cited the report on almost a daily basis to boost the industry in their jurisdictions. And to support policies that abet outdoor recreation.

Now the association has upped the ante with its new report showing outdoor recreation contributes more to the economy than all other industries except health care and financial services. Viewed another way outdoor recreation contributes almost three times as much to the economy as does the energy industry - \$887 billion compared to \$304 billion.

The association intends to use that power to advocate for protection of the nation's lands and waters. Amy Roberts, executive director of the group, expressed alarm about President Trump's April 26 executive order directing a review of 25 national monument designations.

"We are deeply concerned about the order and our hope is that no one seeks to roll back or dilute over 100 years of history and protection for our nation's public lands through the Antiquities Act," she said. "Monuments, many of which have become national parks, have created economic prosperity and jobs in local communities for decades."

The Outdoor Industry Association report is available at:  
[https://outdoorindustry.org/wp-content/uploads/2017/04/OIA\\_RecEconomy\\_FINAL\\_Single.pdf](https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf).

## Notes

**NPS, FS law enforcement officers fewer.** The environmental group Public Employees for Environmental Responsibility (PEER) says in two new reports that the number of police officers in the Park Service and Forest Service has decreased significantly in the last six years. In a report May 9 PEER said the number of park police officers has dropped from 652 in 2010 to 583 in 2016, that despite a surge in visitation. In a report May 15 PEER said the number of Forest Service law enforcement officers in the same period shrunk from 635 to 526. Said PEER Executive Director Jeff Ruch, "The U.S. Park Police are at a low ebb while facing a rising tide. In recent years, this force has not had the personnel to match its mission and that gap is only growing larger." PEER said anticipated Trump budget cuts could accelerate the reductions in police. For its part the Park Service May 16 paid homage to the Park Service rangers and police who have died in the line of duty. "Statistics show that every 53 hours, an officer in the United States is killed in line of duty. It is extremely noble to voluntarily take an oath to place others above yourself," said Charles Cuvelier, NPS Law Enforcement, Security, and Emergency Services Division chief. "Our rangers face risk every day as they protect the nation's most treasured natural and cultural resources. Those who have fallen while honorably serving our country will not be forgotten." Both PEER reports are available at: <http://www.peer.org>.

**Boundary Waters mining reversal?** Rep. Rick Nolan (D-Minn.) is reportedly asking Interior Department officials to consider opening the way for a massive copper and nickel mine near the Boundary Waters Canoe Area Wilderness in Minnesota. In December the Obama administration denied two applications for leases that cover less than 5,000 acres for the Twin Metals Minnesota company. The Obama administration also said it would withdraw 230,000 acres of the 1.09 million-acre watershed for two years and would consider a 20-year withdrawal of the 230,000 acres. Although the mine and

the wilderness are located on Forest Service land, the Interior Department and its Bureau of Land Management regulate leases and have authority to withdraw land. Now Rep. Nolan is asking the Trump administration to reverse all those initiatives, the Backcountry Hunters and Anglers said May 12. Nolan made an initial plea to the Trump administration in February, infuriating his fellow Democrat Rep. Betty McCollum (D-Minn.) In announcing the rejection of the leases in December Secretary of Agriculture Tom Vilsack said the Obama administration was motivated by the damage the mine could do to the \$45 million per year recreation economy in the area. Backcountry Hunters and Anglers Upper Great Lakes Outreach Coordinator Will Jenkins said, "Minnesotans including hunters, anglers and outdoor recreationists have made clear the value of the Boundary Waters, of fish and wildlife, and of our treasured public lands traditions. That Congressman Nolan would attempt to dismiss these interests and jeopardize a crown jewel of America's wilderness system shows where his loyalties lie."

# Public Lands News®

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 42 Number 10, May 19, 2017

*In this issue. . . .*

**Late approps request puts Hill under gun.** *FY 2018 budget expected on 23rd. Will post reduction details. Appropriators must move fast.... Page 1*

**DoI halts advisory panels, explanation asked.** *More than 200 groups shut down, including 38 BLM RACs. Zinke starting over. Dems are upset... Page 4*

**Some criticism of DoI number two.** *Cantwell posts objections to Bernhardt at Interior. A few names circulated for NPS boss, little elsewhere.. Page 5*

**Senate vote leaves methane rule in place.** *CRA resolution to revoke rule fails in 51 to 49 vote. Rule critics turn to courts, DoI review..... Page 7*

**Monuments review input immediate.** *Critics, backers of Obama actions in Utah offer early input. May 26 deadline. Zinke takes a tour..... Page 9*

**DoI leads fight against energy rules.** *Now that Congress has not acted on resolutions to repeal them. Could be a long, hard admin slog..... Page 11*

**Conservatives enter CRA lawsuit.** *Pacific Legal taking on enviro lawsuit on law unconstitutionality. Says resolution enactment proves it..... Page 12*

**API offers complex position on royalty rule.** *Although it backs repeal of rule, API says it accepts central tenet of indexing, sometimes.... Page 14*

**IBLA decisions..... Page 15**

**Notes..... Page 16**

**Boxscore of legislation..... Page 17**

**Federal Parks & Recreation addendum..... Page 18**

**FY 2018 approps request imminent; hearings compressed**

As soon as President Trump signed a fiscal year 2017 appropriations bill into law (PL 115-31) May 5, attention turned to his anticipated, detailed fiscal 2018 budget request.

The fiscal 2018 request, expected May 23, will put flesh on an outline of a budget recommendation that the administration published March 16. That recommendation would famously slash Interior Department spending by 12 percent.

House and Senate appropriators are under the gun to act fast. Said an aide to Senate Appropriations Committee Chairman Thad Cochran (R-Miss.), "Chairman Cochran awaits the President's detailed budget request, which will allow subcommittees to begin hearings for fiscal year 2018. An active hearing schedule is taking shape, but a mark-up timetable has not been determined."

While some subcommittees have held preliminary hearings based on the March 16

outline, they will be forced to compress their schedules over the next month. The Senate subcommittee on Interior appropriations, for one, has held no hearings.

Customarily, a President submits a detailed budget request in early February, giving the House and Senate time to write a Congressional budget and appropriators time to hold hearings in March and April. Mark-ups usually follow in June. But because of the transition in administrations the detailed Trump budget is not expected until next week.

Meanwhile, the fiscal 2017 appropriations law roughly maintains fiscal 2016 levels for most public lands and park and recreation programs.

PL 115-31 does give BLM an extra \$22 million for resource management and the Park Service an extra \$29 million for operations. But it also cuts spending for federal land acquisition by \$38 million.

**Fiscal 2018 budget:** The Trump administration March 16 proposed a \$1.5 billion reduction in Interior Department spending for fiscal year 2018, down to \$11.6 billion from a level of \$13.1 billion. The Office of Management and Budget, our sources say, intends to lay out the details May 23.

Despite the overall decrease the stripped-down, 62-page budget request would increase spending on energy development onshore and offshore at unspecified levels.

The budget would also maintain wildfire spending in the Forest Service and the Interior Department at the 10-year average of \$2.4 billion. The administration did not suggest a shift of emergency wildfire spending out of appropriations, as both Republican and Democratic Congressional leaders recommend.

To reach its 12 percent decrease in spending for the Interior Department the Trump administration would eliminate programs such as National Heritage Areas.

The Trump administration's proposed Interior Department cut is in line with the President's philosophy of transferring the business of federal agencies to state and local governments and the private sector. By program:

**Energy:** The request is all in on energy development, saying it, "Strengthens the Nation's energy security by increasing funding for DoI programs that support environmentally responsible development of energy on public lands and offshore waters. Combined with administrative reforms already in progress, this would allow DoI to streamline permitting processes and provide industry with access to the energy resources America needs, while ensuring taxpayers receive a fair return from the development of these public resources."

**Agency operations:** For land management agencies the budget "streamlines operations while providing the necessary resources for DoI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety."

**Wildfire:** The administration says its request, "Fully funds wildland fire preparedness and suppression activities at \$2.4 billion, 100 percent of the 10-year average for suppression operations, to ensure the resources necessary to protect life and property."

**PILT:** The administration takes on the sacrosanct payments-in-lieu of taxes (PILT) program, saying it, "Supports counties through discretionary funding for the (PILT) program at a reduced level, but in line with average funding for PILT over the past decade."

**Fiscal 2017 numbers:** Here are a few numbers in the final fiscal 2017 appropriations law, compared to fiscal 2016:

**BLM RESOURCE MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

**PAYMENTS-IN-LIEU OF TAXES:** The fiscal 2017 law contains an appropriation of \$465 million, compared to a fiscal 2016 appropriation of \$452 million.

**WILD HORSES AND BURROS:** The fiscal 2017 law contains an appropriation of \$80.6 million, the same as a fiscal 2016 appropriation of \$80.6 million.

**ENERGY AND MINERALS:** The fiscal 2017 law contains an appropriation of \$172.8 million, compared to a fiscal 2016 appropriation of \$166 million.

**NATIONAL LANDSCAPE CONSERVATION SYSTEM:** The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

**NATIONAL FOREST SYSTEM:** The fiscal 2017 law contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

**FOREST PRODUCTS:** The fiscal 2017 law contains \$367.8 million for this line item, which includes timber sales, compared to a fiscal 2016 appropriation of \$359.8 million.

**FWS REFUGE MANAGEMENT:** The fiscal 2017 law contains an appropriation of \$483.9 million, compared to a fiscal 2016 appropriation of \$481.4 million.

**LWCF FEDERAL:** The fiscal 2017 law contains an appropriation of \$188.8 million, compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: BLM is to receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service is to receive \$50 million compared to \$58.5 million; the Park Service is to receive \$42 million compared to \$53.7 million; and the Forest Service is to receive \$54.4 million compared to \$64.4 million.

**Fiscal 2017 riders:** Appropriators killed most amendments/riders the House and the Senate Appropriations Committee approved last year. Topping the list of deleted amendments was a House proposal to forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine.

Also lopped off the bill were riders that would have: (1) forbid the implementation of an Office of Natural Resources Revenue rule on coal, oil and gas royalties; (2) forbid the implementation of an EPA rule regulating oil and gas methane emissions; (3) forbid the implementation of an Obama administration policy governing the greater sage-grouse under the Endangered Species Act; and (4) forbid the Interior Department from delisting the gray wolf in Wyoming from the Endangered Species Act.

But PL 115-31 does contain two important amendments:

**BLM foundation:** The measure authorizes for the first time a Bureau of Land Management Foundation. Foundation donors will be able to specify what programs should receive their money. On the list are wild horses and burros, national conservation areas, recreation resources and so on. By the same token donors could direct the distribution of their contributions to the reclamation of abandoned hard rock mining and energy sites.

Other land management agencies already have similar foundations, including the National Park Foundation, the National Fish and Wildlife Foundation, and the National Forest Foundation. Like those foundations, a BLM entity would have the authority to operate like a nonprofit group and collect and distribute money.

*Eastern Alaska plan:* The measure directs BLM to revisit a new plan released by BLM January 6 that covers 6.5 million acres of eastern interior Alaska. Among other things the plan designates 1 million acres of the region as areas of critical environmental concern that will limit mining and other uses.

Says the report accompanying the fiscal 2017 bill, "The Bureau is instructed to review recently executed land management plans to determine whether decisions to retain certain mineral closures are consistent with Federal law, including the Alaska National Interest Lands Conservation Act and the Federal Land Policy Management Act, including a determination whether sufficient notice was provided prior to the creation of Areas of Critical Environmental Concern."

### Interior halts agency advisory groups; may start over

The Interior Department confirmed this week that it has suspended the work of more than 200 advisory panels, including 38 BLM resource advisory councils, known as RACs.

A department spokesman described the suspension as a strategy to more fully gather input on public land policy. "To maximize feedback from these boards and ensure their compliance with the Federal Advisory Committee Act and the President's recent executive orders, the Department is currently reviewing the charter and charge of each Board/Advisory Committee," said spokesman Paul Ross.

"This review process necessitates the temporary postponement of advisory committee meetings."

He added, "As the Department concludes its review in the weeks ahead, agencies will (post) notice (of) future meetings to ensure that the Department continues to get the benefit of the views of local communities in all decision-making on public land management."

The department did not share with us any overarching policy directive from Secretary of Interior Ryan Zinke. Indeed, the suspension first became public when BLM officials notified RAC members last week that the RACs had been shut down.

On May 9 the Center for Biological Diversity sent a Freedom of Information request to the Interior Department demanding all documents attendant to the review, "including and/or mentioning any member's removal, suspension, dismissal, nonrenewal of terms, and/or termination from any Interior Department scientific advisory board, committee, group and/or panel, as referenced in media outlets from January 20, 2017 to the date of this search."

Eight Democratic senators are getting into the game. They wrote Zinke May 11, "We are very concerned about this news and would like an answer as to why the RAC meetings were postponed during the BLM's review of all advisory boards and committees. It is critical that local voices, including RACs, have the opportunity to provide input and take part in the process at all times, not just when those local voices align with the Administration or a large special interest."

Sens. Ron Wyden and Jeff Merkley, both Oregon Democrats, were the lead signatories.

with Zinke's tour of national monument in Utah this past week. "Cancelling these meetings while holding a one-sided listening tour across Utah sends a clear signal that Secretary Zinke intends to make decisions behind closed doors and not through an open and transparent public process," said Greg Zimmerman, deputy director of the Center of Western Priorities.

In Utah conservationists and native groups said Zinke last week met primarily with critics of the designation of a Bears Ears National Monument by the Obama administration and a grand Staircase-Escalante National Monument by the Clinton administration.

The BLM advisory councils consist of 15 citizen members who meet four times per year. The members represent a wide range of interests from local officials to commodity industries to conservationists.

Said Zimmerman, "This announcement runs absolutely counter to the Trump Administration's commitment to listen to rural communities. At the very time they're discussing major land management changes, eliminating monuments and increasing the pace of development they're also choosing to shut out stakeholders."

But Interior's Ross said the opposite - that Zinke will listen to the public. "The Secretary is committed to restoring trust in the Department's decision-making and that begins with institutionalizing state and local input and ongoing collaboration, particularly in communities surrounding public lands," he said.

The suspension of the advisory boards follows up on the leak to the press last month of an internal BLM priority agenda. That agenda calls for an acceleration in the processing of applications for permit to drill for oil and gas.

It is no secret that the Trump administration has made domestic development of energy a centerpiece of its overall agenda, particularly on the public lands. As an initial step in that agenda the administration - with the support of the Republican Congress - has begun to undo Obama administration restrictions on energy development.

On March 28 President Trump directed the Interior Department to terminate a coal-leasing moratorium and to begin work on reversing oil and gas regulations governing hydraulic fracturing, methane emissions, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Secretary of Interior Ryan Zink immediately terminated the coal-leasing moratorium and ordered BLM to get the ball rolling on reversing the oil and gas regulations. (See related particle page 11.)

### Senate holds hearing on DoI number two; agency heads?

A handful of Senate Democrats expressed deep reservations May 18 about President Trump's nomination of former Interior Department Solicitor and current lobbyist David L. Bernhardt as deputy secretary of Interior, the number two spot.

Whether those reservations, expressed at a confirmation hearing hosted by the Senate Energy Committee, are sufficient to defeat his nomination on the Senate floor remains to be seen. Back in 2009 the Senate affirmed Bernhardt's nomination as Interior Department Solicitor by voice vote.

The Trump administration has been notoriously slow in making subcabinet political nominations. Although Secretary of Interior Ryan Zinke and Secretary of Agriculture Sonny Perdue have both been nominated and confirmed, none of their top lieutenants have.

President Trump nominated Bernhardt to the Interior deputy position on April 28. He has yet to make a nomination for Under Secretary of Agriculture for Natural Resources.

Bernhardt's nomination drew criticism from ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) She objects to Bernhardt's long record of representing corporations in legal disputes in areas that he will now oversee. "I have to say at the outset that I have concerns about Mr. Bernhardt's nomination," she said, before outlining his past work in the department and private industry.

Committee chairman Sen. Lisa Murkowski (R-Alaska) and other Republicans solidly backed Bernhardt's nomination. Said Murkowski, "I believe Mr. Bernhardt is an excellent choice for deputy secretary . . . He understands the management of federal lands and how it affects those who live those lands, the implication of federal policy and the balance between conservation and development.

Bernhardt was employed most recently as a member of the law firm Brownstein Hyatt Farber Schreck LLP, where he represented energy and mining companies and the Westlands Water District in California.

The environmental group Public Employees for Environmental Responsibility (PEER) charged Bernhardt with tinkering with scientific reports about the effects of oil and gas development in Arctic National Wildlife Refuge (ANWR). Bernhardt was an aide to then Secretary of Interior Gale Norton in 2001.

"The Senate needs to thoroughly investigate his role in this blatant political manipulation of science before considering his nomination," said PEER Executive Director Jeff Ruch.

Here are the acting heads of natural resource agencies and a few names circulated as possible directors/chiefs:

**BLM:** Former BLM Eastern States Director Michael Nedd is serving as acting director. Utah House Rules Chairman Michael E. Noel (R) had been high on the list of possible nominees for BLM director, but that possibility has faded.

Noel has been a leading champion of transfer of federal lands to the State of Utah, but Zinke has championed federal retention of public lands.

**Forest Service:** Tom Tidwell, long-time chief during the Obama administration, is expected to stay on for the immediate future while Purdue organizes his department and the Trump administration nominates a deputy secretary for natural resources.

**NPS:** Even before former director Jonathan B. Jarvis left office with the Obama administration the Park Service had made it clear that his assistant Mike Reynolds would serve as acting director in the early days of the Trump administration.

A few names of possible nominees as director have been bandied about including David Mihalic, former superintendent of Yosemite National Park, and Rob Wallace, former Hill staffer. Wallace once served as assistant director of NPS and most recently has worked for i2Capital, an advisory company.

**FWS:** Jim Kurth has been serving as acting director, succeeding former director Dan Ashe. Kurth had served as the service's deputy director for operations for the last two years.

In a related development Zinke has appointed Vincent DeVito as his counselor for energy policy. Senate confirmation is not required. DeVito was most recently a partner in the law firm Bowditch & Dewey, LLP in Boston.

May 19, 2017

Page 7

Surprise Senate vote leaves BLM methane rule in place

In a stunning reversal for the Trump administration the Senate May 10 backed an Obama administration regulation governing oil and gas methane emissions from the public lands.

The Senate by a narrow 51-to-49 vote refused to consider a resolution (HJ Res 36) that would have paved the way for the repeal of the BLM rule of Nov. 15, 2016. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

Now, opponents of the BLM rule must rely on a laborious administrative rewrite/removal of the regulation, or on the federal courts. Said Kathleen Sgamma, president of the Western Energy Alliance, "(A) district court judge expressed grave doubts about BLM's authority to regulate air quality, and we and the states will continue to press that point. We'll also be working closely with the Department of the Interior on reviewing and rescinding this rule."

Sen. Maria Cantwell (D-Wash.), who led the Senate opposition to HJ Res 36, encouraged the Interior Department to implement the BLM rule as is. "What is now clear is that the BLM Methane Rule has the force of law and the Secretary of the Interior, the Attorney General, and the President should enforce it," she said. "The Department of the Interior cannot just decide to ignore methane pollution."

Environmentalists sounded triumphant. "In recent months, thousands of Americans asked the Senate to stand up for clean air and against the oil lobby, and their efforts were successful today," said Wilderness Society President Jamie Williams.

In the Senate debate Sen. John Hoeven (D-N.D.) repeated the oil and gas industry charge that the BLM rule is unnecessary because EPA and the states already regulate methane emissions.

"For those wondering why methane emissions aren't already regulated, there is a simple explanation: They are," he said. "Under the Clean Air Act, the Environmental Protection Agency, in partnership with individual states, is tasked with regulating air quality, which includes methane emissions."

Not only that, said Hoeven, "It is working nationally, methane emissions from the oil and gas industry have been on the decline for a number of years. So we are already actively working at the state level under a regulatory regime where states have primacy to spend, authorized by EPA, to reduce natural gas flaring."

Hoeven didn't mention that the Trump administration has taken steps to do away with a key EPA methane emissions rule. On April 20 EPA stayed a deadline for compliance with its rule for 90 days beyond a June 3, 2017, deadline.

The EPA rule, which would govern methane emissions from future oil and gas operations, would not only set emission limits but also require operators to find and repair leaks.

The BLM rule limits the rate of flaring, requires frequent inspections by operators and requires the replacement of outdated equipment, among other things.

Cantwell countered Hoeven by contending that the BLM rule would prevent substantial amounts of methane pollution from escaping into the atmosphere with restrictions not in the EPA rule.

public health. . . It creates ozone and smog," she said. "It also can make people sick. This pollution worsens asthma, emphysema, and increases the risk of premature death. It releases toxins, like benzene, that cause cancer. And the methane, the main constituent of the natural gas, is 25 times more powerful at trapping heat than carbon dioxide."

Sen. Martin Heinrich (D-N.M.) also argued that the rule would prevent the loss of royalties to states and federal taxpayers from escaped methane that lease operators don't pay royalties on. "A recent report found that New Mexico taxpayers have lost out on over \$42 million of royalty revenues since the year 2009 - \$42,728,949 to be exact," he said. That March 2014 report was prepared by ICF International, a global research firm.

Hoeven in turn countered that the rule itself would cost industry much more. "This rule has been calculated to cost up to \$279 million each year. So the cost of this rule is \$279 million a year - a duplicative rule. That is in addition to the red tape. BLM estimates that the rule will impose an additional 82,000 hours of paperwork," he said.

In the Senate action Sen. John McCain (R-Ariz.) provided the key - and unexpected - margin against the rule. Republican Sens. Susan Collins (R-Me.) and Lindsey Graham (R-S.C.) also voted against. The vote was unexpected because Senate Majority Leader Mitch McConnell (R-Ky.) almost always has his ducks in a row in major votes.

The Senate vote came just before the CRA deadline for repeal of Obama administration regulations. The CRA gave the House and Senate just 60 working days from the time regulations were enacted to vote on reversals, or May 11. The law allowed Congress to address only those Obama administration regulations issued after June 13, 2016. Now time has run out on a half-dozen other proposed resolutions of revocation floating around Congress.

Those failed resolutions addressed Fish and Wildlife Service oil and gas regulations; National Park Service oil and gas resolutions; Office of Natural Resources Revenue energy royalty rules; BLM site security rules; and BLM oil and gas measurements rules. (See related article page 11.)

Although the Trump administration has begun a review of Obama administration energy rules, it may take years to replace/revise them with new regulations.

Congress did use the CRA to approve two resolutions that President Trump signed, revoking a BLM planning rule and a Fish and Wildlife Service rule governing hunting in Alaska.

The May 10 Senate action on the methane rule brings to the forefront a lawsuit from the oil and gas industry in opposition to the rule, as Sgamma mentioned above. Industry argues in the lawsuit, as Hoeven did, that BLM has no authority to regulate emissions; only EPA does.

In that suit on January 16 Judge Scott W. Skavdahl in U.S. District Court in Wyoming refused for now to halt implementation of the rule. He held that industry plaintiffs had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility.

Said the judge, "The Court questions whether the 'social cost of methane' is an appropriate factor for BLM to consider in promulgating a resource conservation rule pursuant to its [Mineral Leasing Act] authority."

In a separate lawsuit the Center for Biological Diversity is questioning the constitutionality of the CRA itself. The April 20 suit said the CRA violates the Constitutional separation of powers precept by preventing a federal agency from carrying out its legal duty. That is, once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one. (See related article page 12.)

Pacific Legal Foundation has intervened in the center's lawsuit, arguing in favor of the constitutionality of the law. The foundation says the passage of the resolution by the House and the Senate and the signing of the resolution by the President, by definition, "fully complied with the Constitution's bicameralism and presentment requirements."

### DOI monument review touches off intense debate

The Trump administration will take public comments until May 26 on its review of the designation of 22 recent national monuments and five marine monuments, the Interior Department formally announced May 11.

The comment period is sure to produce a furious wave of comments, pro and con; indeed it already has. Much of the focus will be on a Bears Ears National Monument and a Grand Staircase Escalante National Monument, both in Utah.

In a trip through Utah this week Secretary of Interior Ryan Zinke gave mixed signals about what action(s) he would recommend. "Some of the monuments are, I don't want to say universally, but certainly widely, supported and accepted," he said according to the *Salt Lake Tribune*. "The Bears Ears is not widely supported or accepted in the state of Utah."

At the same time he rejected the notion that the five Indian tribes that pushed for the Bears Ears designation were taken in by environmentalists. "I think they're smart, capable, passionate, and have a deep sense of tie to their culture and want to preserve it," Zinke said, according to the *Tribune*.

Zinke's tour was organized by the office of Utah Gov. Gary Herbert (R-Utah) and, the *Tribune* said, allowed limited availability to critics of the monument review and to the public at large. Former Secretary of Interior Sally Jewell did open herself up to the public at large on the run up to the designation of Bears Ears on Dec. 28, 2016.

The Utah Congressional delegation has pushed vigorously for a revocation or revision of the 1.3 million-acre Bears Ears Monument. Said Sen. Mike Lee (R-Utah) after President Trump announced the review, "I commend President Trump for beginning a review of past monument designations and I'm confident that after that review some of them, including the recent Bears Ears designation, will be rescinded or altered to better conform with the original intention of the Antiquities Act."

On May 8 The Wilderness Society struck back, charging that a repeal or shrinking of Bears Ears and/or Grand Staircase would be devastating for small businesses in the area. Said Matt Keller, senior director of conservation with The Wilderness Society, "These mom and pop shops are making Main Streets strong and driving growth of rural communities. Yet Trump is trying every trick in the book to give gifts to his friends in the extractive industry, selling out our natural and cultural wonders for short term profit."

Keller was backed up by Kristina Waggoner, vice president of the Boulder-Escalante Chamber of Commerce. "This executive order is an attack on my community's economic future," she said. "Visitors come from across our country and the world to marvel at our colorful sandstone cliffs cascading across Utah's largest network of

slot canyons. These visitors are key to the success of local businesses."

The "X" factors in the debate are sportsmen and the outdoor industry; they have thus far campaigned widely and loudly in support of national monuments in the West. More than 100 hunting and fishing businesses wrote Congress May 9 and said, "We are writing in support of the Antiquities Act of 1906 and to request that it be used responsibly and in a way that supports the continuation of hunting and fishing in America."

The Interior Department review comment period began May 11 and lasts through May 26. Comments may be sent to <http://www.regulations.gov> and enter "DOI-2017-0002" in the Search bar and click "Search."

In the May 11 *Federal Register* notice the Interior Department listed the 22 onshore national monuments it will review plus the five marine national monuments. The notice provides the locations of the monuments, the dates they were designated and their acreage. The notice is here:

<https://www.gpo.gov/fdsys/pkg/FR-2017-05-11/pdf/2017-09490.pdf>.

President Trump signed an executive order April 26 directing the Interior Department to review the designations of national monuments of more than 100,000 acres made since 1996. Trump did not take the ultimate step and say he had the authority to revoke those designations.

The 100,000-acre limit applies to 21 national monuments in the West, plus an 87,500-acre Katahdin Woods and Waters National Monument in Maine and five huge marine monuments. That's 27 total.

The Trump-Zinke review could set the stage for Trump to at least reduce the size of the national monuments, if not outright revoke their designations. It directs Secretary of Interior Ryan Zinke to report back to the White House within 120 days with recommendations for "Presidential actions, legislative proposals, or other actions consistent with law."

Zinke sounded most interested in reducing the size of monuments, not so much the outright revocation of them. "Historically, the Act calls for the President to designate the 'smallest area compatible with proper care and management of the objects to be protected,'" he said. "Despite this clear directive 'smallest area' has become the exception and not the rule."

For the Bears Ears National Monument in southern Utah the executive order asks for a response from Zinke within 45 days.

Said Trump in a ceremony at the Interior Department, "The previous administration used a 100-year-old law known as the Antiquities Act to unilaterally put millions of acres of land and water under strict federal control - have you heard about that? - eliminating the ability of the people who actually live in those states to decide how best to use that land."

A national debate has erupted about whether or not the President has authority to unilaterally revoke or revise a national monument designation. In late March the influential American Enterprise Institute (AEI) published a report that argues Trump has unlimited authority to do so. However, that report disagrees with a 1938 U.S. Attorney General opinion and a Congressional Research Service report of last fall that doubt Trump enjoys such authority.

President Trump's executive order is available at:

<https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>.

**May 19, 2017****Page 11**As CRA rule repeal deadline expires, agencies take over

Now that Congress has failed to repeal Obama administration fossil fuels regulations, an Interior Department review of the rules takes center stage.

Numerous energy industry groups have made it clear that in the wake of a Senate vote that left in place a BLM methane emissions rule they expect the administration to revise or terminate that rule administratively.

Said API Upstream and Industry Operations Group Director Erik Milito after the Senate vote May 10, "While it is disappointing that the Senate did not act to correct the rule more quickly, we look forward to working with the administration on policies that continue our commitment to safely produce the energy that Americans rely on, help consumers, create jobs, strengthen our national security, and protect our environment."

In addition to the methane rule the Interior Department review, kicked off by an order from Secretary Ryan Zinke March 29, is looking at rules governing hydraulic fracturing, oil and gas development in national parks, and oil and gas development in national wildlife refuges.

Under Zinke's timetable those reviews by BLM, the Fish and Wildlife Service, and the Park Service should have been completed by the end of April and sent to him. In the review President Trump directed the Interior Department to identify "burdensome" regulations and, if deemed necessary, to "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules."

Zinke did take unilateral action March 29 to undo a coal-leasing moratorium imposed by former Secretary of Interior Sally Jewell. In other words the administration does not consider the prior work done on an EIS by the Obama administration demands continuation of that work, or an EIS to back a reversal.

Environmentalists immediately filed a lawsuit arguing that the Trump administration should prepare an EIS before cancelling the moratorium.

Separately, the Office of Natural Resources Revenue (ONRR) has taken two steps to stop and replace an Obama administration coal, oil and gas royalty rule. On February 22 ONRR postponed implementation of the Obama rule and on April 4 it proposed outright repeal of the rule, combined with a solicitation of comments on a new proposed rule.

In its July 1, 2016, royalty rule the Obama regulations replaced an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

Here are the four Obama fossil fuels regulations now under review by the Interior Department

**BLM methane emissions rule:** The Senate May 10 backed an Obama administration regulation governing oil and gas methane emissions from the public lands. (See separate article page 7.)

The Senate by a narrow 51-to-49 vote refused to consider a resolution (HJ Res 36) that would have paved the way for the repeal of the BLM rule of Nov. 15, 2016. The House had approved the resolution on February 23 by a 221-to-191 vote and, if it had come to President Trump, he was sure to sign it.

That leaves in place the Zinke review launched on March 29.

And it also leaves in place a lawsuit against the rule from the Western Energy Alliance and other energy industry entities. In that suit on January 16 Judge Scott W. Skavdahl in U.S. District Court in Wyoming refused for now to halt implementation of the rule. He held that industry plaintiffs had not yet proved they would be harmed by the regulation.

However, Skavdahl was skeptical of BLM's argument that the rule is designed to prevent waste, i.e. methane venting, and not to assume EPA's clean air responsibility.

**BLM hydraulic fracturing rule:** This BLM rule of March 26, 2015, was not subject to a Congressional repeal resolution because it was issued before the deadline for filing such resolutions.

The rule would have companies (1) validate well integrity and cement barriers, (2) disclose chemicals used in fracking shortly after completing operations, (3) follow stiffer standards on storage of waste fluids and (4) submit more detailed information on the geology and location of existing wells.

On June 21, 2016, Judge Skavdahl blocked implementation of the rule, saying BLM had no authority to issue the regulation, period. He said Congress had forbidden both BLM and EPA from regulating non-diesel hydraulic fracturing.

**FWS oil and gas rule:** On January 30 Rep. Kevin Cramer (R-N.D.) and five of his colleagues introduced a resolution (HJ Res 45) to revoke a Fish and Wildlife Service (FWS) oil and gas management rule of Nov. 14, 2016. That final rule would have FWS tighten its oversight of oil and gas operations within wildlife refuges. The rule went into effect Dec. 14, 2016.

The rule would require a minerals owner to obtain an operations permit and to obtain financial assurance, i.e. a bond to cover any possible damages and reclamation costs.

FWS says that more than 100 refuges host oil and gas operations. That includes almost 1,700 producing wells, and thousands more inactive or plugged wells.

The Trump executive order directs BLM to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

**NPS oil and gas rule:** On January 30 Rep. Paul Gosar (R-Ariz.) and five of his Republican colleagues introduced a resolution (HJ Res 46) to revoke a Park Service oil and gas management rule of Nov. 3, 2016.

The NPS rule would subject all oil and gas operations in the national parks to the regulations. The rule was scheduled to go into effect Dec. 5, 2016.

Currently, 12 of the 408 National Park System units host oil and gas operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

The Trump executive order directs BLM to revise/terminate the rule. The Zinke order begins carrying out Trump's direction.

## Conservatives counter conservationists on CRA legality

A conservative legal group is seeking to intervene in an environmentalist lawsuit challenging the Constitutionality of the Congressional Review Act (CRA) DOI-2019-11 03298

Congress has used the law to revoke 13 Obama administration regulations, including two important public lands rules.

The group, the Pacific Legal Foundation, argues that the lawsuit should be dismissed because, among other things, the environmentalists are flatly wrong in their assertion that the act violates the separation of powers.

The immediate target of the lawsuit from the Center for Biological Diversity is a CRA resolution that President Trump signed into law April 3 (PL 115-20). It revokes a rule limiting hunting and fishing in national wildlife refuges in Alaska.

The conservation foundation argues the passage of the resolution by the House and the Senate and the signing of the resolution by the President, by definition, "fully complied with the Constitution's bicameralism and presentment requirements."

Said foundation attorney Jonathan Wood, "Under our Constitution, administrative agencies only have power that Congress chooses to delegate to them. Congress is free to limit its delegation of power as it sees fit. What Congress gives, it can take away, or curtail."

The lawsuit from the Center for Biological Diversity contends the CRA violates the Constitutional separation of powers precept by preventing a federal agency from carrying out its legal duty. That is, once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the old one.

The lawsuit argues, "By nullifying the Refuges Rule, and prohibiting any future substantially similar rules, 5 U.S.C. § 801(b)(2), without amending any of Interior's existing rulemaking authorities, Congress expanded its own power at the expense of the executive branch. Such Congressional overreaching undermines the separation of powers that must be maintained between the legislative and executive branches, in violation of the U.S. Constitution."

That is, Congress has delegated to the Fish and Wildlife Service (FWS) - i.e. the executive branch - broad powers to manage the nation's wildlife refuges. By constraining those powers, the lawsuit maintains, Congress is interfering with the authority of FWS (the executive branch) to manage the refuges.

At issue in Congress's revocation resolution is an Aug. 8, 2016, FWS rule that pre-empted a State of Alaska policy authorizing "intensive predator management" in wildlife refuges in Alaska. The FWS rule curbed a state policy governing the hunting of bears and wolves.

In addition to the Alaska hunting rule Congress also revoked a BLM planning 2.0 rule (PL 115-12) on March 27. BLM published the rule on Dec. 12, 2016.

Of importance, the Senate May 10 rejected a resolution that targeted another controversial BLM public lands rule that governs methane emissions from oil and gas projects. BLM completed the rule on Nov. 15, 2016. The House approved the resolution (HJ Res 36) February 23 by a vote of 221-to-191 but the Senate voted against 51-to-49. (See related article page 7.)

Time has now run out on a half-dozen other resolutions targeting public lands regulations. That's because the CRA only gave the House and Senate 60 working days to act on regulations, or, according to the Congressional schedule, May 9. The law allowed Congress to address only those Obama administration regulations issued after June 13, 2016.

The CRA requires only a simple majority of both the House and Senate, circumventing a Senate filibuster. Of importance once a rule is revoked the CRA forbids an agency from producing a new rule "substantially" like the

Although environmentalists objected strenuously to the Alaska hunting resolution, their cause was hampered by the support for the resolution of their hunting and fishing colleagues in the conservation community.

The FWS regulation held that the State of Alaska may not regulate predators in 77 million acres of federal wildlife refuges unless state regulations are based on sound science. The rule did not affect subsistence hunting by Alaska Natives.

#### API favors some O&G royalty indexing; two states sue

The Trump administration's delay in implementing an Obama administration energy royalty rule is running into mixed reactions.

The American Petroleum Institute (API) for one fully backs the delay of the Obama rule because it objects to authority for the Office of Natural Resources Revenue (ONRR) to impose after-the-fact penalties on lessees.

But if ONRR were to write a new rule to replace the Obama rule, API does favor one central Obama provision, albeit in a modified format - indexing.

"API members conceptually support the option to choose index pricing for unprocessed and processed gas and strongly recommended to ONRR that the option be available to arm's-length sales as they too have the same tracing and unbundling issues as those lessees with non-arm's-length sales," API told ONRR earlier this month. "Unfortunately, the index pricing terms implemented in the 2017 Valuation Rule result in an arbitrary premium for the privilege and ignore how oil and gas actually flows and is sold."

In its July 1, 2016, rule the Obama regulations replaced an old standard that applied (and may apply again) a series of benchmarks to set the royalty price. In the Obama rule ONRR would begin with a first affiliated sales price, followed by index prices.

The Trump administration has taken two steps to stop and replace the Obama rule. On February 22 ONRR postponed implementation of the Obama rule and on April 4 it proposed outright repeal of the rule, combined with a solicitation of comments on a new proposed rule. That is the solicitation to which API responded.

**States go to court:** Meanwhile, the States of California and New Mexico have filed a lawsuit against the delay in implementation of the Obama rule. They argue, as have Congressional Democrats, that ONRR has no authority to delay implementation of a regulation once it has been instituted.

"An agency cannot 'postpone' the effective date of a rule when that effective date has already come and gone," said the states in a lawsuit filed in U.S. District Court for Northern California. "Further, the legal basis on which the agency relied for the postponement, Section 705 of the Administrative Procedure Act, does not apply to rules that have already gone into effect. ONRR's attempt to delay the Rule after it became effective is facially invalid, and constitutes an attempted end-run around the APA's notice-and-comment requirements."

In their lawsuit the states say the postponement of the Obama rule "will impact the amount of royalties received by the States on the extraction of these resources." The complaint is available at: [https://www.oag.ca.gov/system/files/attachments/press\\_releases/Valuation%20Rule%20Complaint%20Filed%2004.26.2017.pdf](https://www.oag.ca.gov/system/files/attachments/press_releases/Valuation%20Rule%20Complaint%20Filed%2004.26.2017.pdf)?

Indeed, in opposing the postponement the Sierra Club and the Earthjustice law firm said states and taxpayers could lose significant amounts of money. "Returning to flawed and outdated procedures that were easily gamed by regulate companies will

**May 19, 2017****Page 15**

cost states and taxpayers approximately \$70 million to \$80 million every year," the groups told ONRR.

But the State of Montana Attorney General Tim Fox is more sanguine about the postponement because he said the Obama rule would discourage coal development and cost the state jobs and income. "In particular, the 2017 Valuation Rule's expansion of the default provisions are of concern as they were certain to have had a chilling effect on the coal industry," he said.

In their comments the oil and gas industries objected to the Obama rule because they said it established a default provision that allows ONRR to establish valuation when an operator does not play by the rules. "The default provision undermines the certainty of even a lessee's arm's-length sales prices as value and creates the risk that ONRR may impose a higher royalty value, with corresponding late payment interest, many years after production and initial payment," said API in its comments to ONRR.

Exactly what the Trump administration has in mind for a new rule is not clear. For the time being a Bush administration rule is back in place.

The Western Organization of Resource Councils (WORC) said ONRR should delay work on a new rule until repeal of the Trump rule is decided.

"This rulemaking appears to be premature. By simultaneously seeking comment on whether or not to repeal the Valuation Rule and seeking comment on what to replace the rule with, commenters and other members of the public - including WORC - are left to provide substantive comments on hypothetical or imaginary alternative scenarios, never defined by your department," WORC told ONRR.

Congress has attempted to get in the game, with Rep. Scott Tipton (R-Colo.) introducing a resolution in February to repeal the Obama rule under a Congressional Review Act. However, neither the House nor the Senate acted on the resolution and the Congressional Review Act deadline for repealing rules expired last week.

## IBLA decisions

(We post current Interior Board of Land Appeals decisions at our website, <http://www.plnfpr.com/ibla.htm>. IBLA may be contacted at: Interior Board of Land Appeals, 801 North Quincy St., MS 300 QC, Arlington, VA 22203. Phone (703) 235 3750.)

**Subject:** O&G lease suspensions.

**BLM decision:** BLM will offer suspended lessees a choice - accept new stipulations or have leases cancelled.

**Oil and gas lessees:** BLM has no authority to retroactively change stipulations or cancel leases.

**IBLA decision:** Appeals dismissed, BLM has yet to make appealable decisions.

**Case identification:** *International Petroleum, LLC, Jack Energy, LLC.* 190 IBLA 130. Decided May 4, 2017. Nine pages. Appeal from BLM decisions offering two oil and gas lessees a choice between accepting new lease stipulations or facing cancellation of their leases. UTU 81771, et al.

**IBLA argument:** IBLA Administrative Judge Silvia M. Riechel dismissed this appeal involving 55 suspended oil and gas leases because BLM had not handed down a decision yet. The appellants objected to a BLM letter giving them two choices: accept new stipulations for their leases so as to continue to develop the leases or reject the stipulations and have BLM cancel their leases. But Riechel dismissed the appeals because she said BLM had not reached a final decision yet. The bureau had simply offered the lessees a choice. "There is therefore no bureau decision authorizing or prohibiting an action that affects the lessees' rights or interests. Accordingly, we dismiss the appeals," held Riechel. The appellants had argued that under the Mineral Leasing Act BLM does not have authority to retroactively impose new lease stipulations, or, alternatively, cancel leases. The subject leases are in the Uintah National Forest in Utah and the Forest Service had developed the stipulations. When environmentalists sued on the issuance of the leases in the first place, BLM said it should redo its environmental reviews, leading to the proposed new stipulations. DOI-2019-11 03301

**Subject:** Oil and gas unit modification.

**BLM decision:** BLM will require the elimination of nonparticipating lands from a unit agreement at a five-year deadline.

**Appellant unit operator:** BLM should not have eliminated three leases from the unit.

**IBLA decision:** Affirmed BLM, elimination of the three leases is a separate issue.

**Case identification:** *Willsource Enterprise, LLC.* 190 IBLA 138. Decided May 9, 2017. Eleven pages. Appeal from a decision by the Deputy Director, Colorado State Office of BLM, who upheld a Colorado State Office Order that required Appellant to describe lands eliminated from the Willow Creek Unit by the express terms of the Willow Creek Unit Agreement. SDR CO-12-10.

**IBLA argument:** IBLA Administrative Judge James K. Jackson ruled strictly on the issue of elimination of nonparticipating lands in this complex case involving an oil and gas unit agreement in Colorado. At issue for BLM and judge Jackson was a June 2012 order from BLM for unit operator Willsource Enterprise, LLC to describe nonparticipating lands in the unit agreement at the five-year point of the unit. By regulation at that point the nonparticipating lands are to be removed from the unit. But the appellant Willsource also objected to a separate June 2012 BLM decision eliminating nonparticipating leases from the unit. But Jackson said only the order was at issue here and the BLM rules were clear on eliminating nonparticipating land.

## Notes

**GAO faults BLM on O&G monitoring.** The Government Accountability Office (GAO) said last week that BLM's records on exceptions to environmental rules granted to oil and gas operators are so spotty that the bureau may not be meeting its management responsibilities. GAO said that a survey of 42 field offices showed that less than half tracked exemptions from environmental protection rules in leases. In addition GAO said BLM doesn't have a consistent policy for considering requests for exemptions. The exemptions are grants that allow such things as drilling when wildlife are present. Said Rep. Raúl M. Grijalva (D-Ariz.) for whom the report was prepared, "We can't make it this easy for companies extracting public resources to ignore their environmental responsibilities. The American people have almost no way to know when BLM simply winks and gives oil and gas drillers a green light." In response to the GAO report BLM said it would revise its monitoring policies. "The agency is currently updating its Automated Fluid Minerals Support System to provide for greater transparency and accountability, ensure consistent data quality, standardize the permit process, and provide the vehicle for addressing specific shortcomings identified in the report," Acting BLM Director Michael Nedd wrote GAO. The GAO report, *Oil and Gas Development: Improved Collection and Use of Data Could Enhance BLM's Ability to Assess and Mitigate Environmental Impacts*, is available at: <http://www.gao.gov/products/GAO-17-307>.

**O&G leasing deferred in California.** BLM has agreed to hold off on oil and gas leasing on one million acres in California until it revises a resource management plan. The settlement struck by BLM and environmental groups settles a lawsuit that said BLM failed to consider the impact of hydraulic fracturing in environmental documents. BLM has issued no leases from public lands in California since 2013. "Our hope is that this settlement puts the final nail in the coffin for BLM's illegal practice of rubberstamping fracking in California without environmental review," said Earthjustice attorney Greg Loarie, who represented the groups. "Fracking has no place in California's clean, renewable energy future."

**Coal lease PRLA retirement bill in.** Rep. Ben Ray Lujan (D-N.M.) introduced a bipartisan bill (HR 2402) May 8 that authorizes BLM to retire 21,000 acres of coal preference right lease applications (PRLAs). In return the holder of the potential leases, Ark Coal Company, would receive \$134 million in bidding credits on future coal leases. Ark would have five years to use the bidding credits. Ark's applications lie in an area of northern New Mexico that BLM does not now want developed. The House Natural Resources Committee approved a predecessor bill on March 10, 2016. Cosponsors include three Republicans - Lynn Cheney (R-Wyo.), Doug Lamborn (R-Colo.) and Scott Tipton (R-Colo.)

**Pebble Mine Alaska reversal?** EPA announced an agreement with a mining company May 12 that may open the way for a massive gold and copper operation in Alaska 15 miles from Lake Clark National Park and Preserve. In Feb. 27, 2014, the Obama administration barred construction of the mine under the Clean Water Act, holding the mine would sully streams and Bristol Bay. The Obama EPA ruled even before the company filed permit requests. The Pebble Limited Partnership immediately filed suit. Now the Trump EPA in a settlement agreement with Pebble Limited said it will revisit the Clean Water Act permit. That alarmed the National Parks Conservation Association. "Our members of Congress designated Lake Clark National Park and Preserve to protect a portion of the Bristol Bay ecosystem's health and productivity," said Jim Adams, Alaska regional director for the association. "However, such protections could be compromised by mining activity upstream and near the park's boundary. NPCA believes such threats to wild salmon and the people and wildlife who depend on them do not belong in the headwaters of Bristol Bay and upstream of our national park." The area could contain as much as \$120 billion in gold.

## Conference Calendar

### MAY

20-23. **Association of Consulting Foresters of America National Conference** in Lake Tahoe, Nev. Contact: Association of Consulting Foresters of America, 732 North Washington St., Suite 4-A, Alexandria, VA 22314-1921. (703) 548-0990. <https://www.acf-foresters.org>.

21-24. **National Sporting Goods Association Management Conference** in Scottsdale, Arizona. Contact: National Sporting Goods Association, 1601 Feehanville Drive, Suite 300, Mt. Prospect, IL 60056-6035. (847) 296-6742. <http://www.nsqa.org>.

### JUNE

11-14. **International Right-of-Way Association International Education Conference** in Anchorage, Alaska. Contact: International Right-of-Way Association, Pacifica Harbor Business Center, Suite 220, 19750 S. Vermont Ave., Torrance, CA 90502-1144. (310) 538-0233. <http://www.irwaonline.org>.

21-23. **Independent Petroleum Association of America mid-year Meeting**, in Laguna Niguel, Calif. Contact: Independent Petroleum Association of America, 1201 15th Street NW, Suite 300, Washington, DC 20005. (202) 857-4722. <http://www.ipaa.org>.

26-28. **Western Governors' Association Annual Meeting** in Whitefish, Mont. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

26-29. **Outdoor Retailer Summer Market** in Salt Lake City, Utah. Contact [www.outdoorretailer.com/summer-market](http://www.outdoorretailer.com/summer-market).

### JULY

12-15. **National Cattlemen's Beef Association Summer Meeting** in Denver. Contact: National Cattlemen's Beef Association, 9110 East Nichols Avenue Suite 300 Centennial, CO 80112. (303) 694-0305. <http://www.beef.org/>

20-22. **63nd Annual Rocky Mountain Mineral Law Institute** in Santa Fe, N.M. Contact: Rocky Mountain Mineral Law Foundation, 9191 Sheridan Blvd., #203, Westminster, CO 80031. (303) 321-8100. <https://www.rmmlf.org>.

21-24. **National Association of Counties Annual Conference** in Franklin County, Ohio. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

## Federal Parks & Rec

### addendum to Public Lands News

May 19, 2017

- \* FY 2018 money request due; greens ask for help
- \* Infrastructure bill has lots of fans, no money
- \* Most gains in rec economy report from methodology
- \* Notes
- \* Monuments (See Public Lands News article)

### FY 2018 budget on the cusp, greens make an early plea

As soon as President Trump signed a fiscal year 2017 appropriations bill into law (PL 115-31) May 5, attention turned to his anticipated detailed fiscal 2018 budget request.

The fiscal 2018 request, expected May 23, will flesh out a sketch of a budget recommendation that the administration published March 16. That recommendation would famously slash Interior Department spending by 12 percent.

House and Senate appropriators are under the gun. As we report in the related *Public Lands News* article on page one, Senate Appropriations Committee Chairman Thad Cochran (R-Miss.) anticipates a greatly compressed hearing schedule.

Meanwhile, 49 senators from both parties wrote the Senate Appropriations Committee May 15 and asked for continued support for the Land and Water Conservation Fund (LWCF), including federal land acquisition, state grants and a Forest Legacy program. The lead signatories were Sen. Richard Burr (R-N.C.) and Jeanne Shaheen (D-N.H.)

"We are writing to express our strong support for the (LWCF) and Forest Legacy Program," the senators wrote. "As you begin the process of drafting the Fiscal Year 2018 Interior, Environment, and Related Agencies Appropriations bill, we respectfully request that you allocate at least enacted level funding to this program to honor and continue the commitment to outdoor access for all Americans."

Separately, a huge alliance of conservation groups May 9 asked appropriators to at least maintain fiscal 2017 conservation spending levels for fiscal 2018. Groups including the National Parks Conservation Association and the National Recreation and Park Association deplored proposed reductions in the Trump budget outline of May 16, including a 75 percent cut in the Land and Water Conservation Fund.

They then told House and Senate Appropriations Committee leaders, "We also request this preservation of funding because of the cumulative impact of years of constrained allocations on environmental and public health programs and agencies. Just taking the FY10 enacted levels and adjusting for inflation, the FY17 level is already a 10% cut."

Of note, both the senators and the conservationists ask for level funding for the programs, a departure from past requests for substantial spending increases.

Customarily, a President submits a detailed budget request in early February, giving the House and Senate time to write a Congressional budget and appropriators time to hold hearings in March and April. But because of the transition in administrations the detailed Trump budget is not expected until next week.

levels for most public lands, park and recreation programs.

PL 115-31 does give BLM an extra \$29 million for Park Service operations and an extra \$22 million for BLM resource management. But it also cuts spending for federal land acquisition by \$38 million.

**Fiscal 2018 budget:** The Trump administration's proposed 12 percent cut for the Interior Department follows his administration's philosophy of transferring the business of federal agencies to state and local governments and the private sector. By program:

**NPS operations:** The request says it, "Ensures that the National Park Service assets are preserved for future generations by increasing investment in deferred maintenance projects. Reduces funds for other DoI construction and major maintenance programs, which can rely on existing resources for 2018."

**LWCF:** The request says it, "Reduces funding for lower priority activities, such as new major acquisitions of Federal land. The Budget reduces land acquisition funding by more than \$120 million from the 2017 annualized CR level and would instead focus available discretionary funds on investing in, and maintaining, existing national parks, refuges and public lands."

Assuming the "2017 annualized level" is based on the fiscal 2016 final appropriation for LWCF the Trump administration would decrease land acquisition from \$247 million to \$127 million.

**Partnerships:** To make up for lost appropriations in part, the budget says it, "Leverages taxpayer investment with public and private resources through wildlife conservation, historic preservation, and recreation grants. These voluntary programs encourage partnerships by providing matching funds that produce greater benefits to taxpayers for the Federal dollars invested."

**Fiscal 2017 numbers:** Here are a few fiscal 2017 appropriations numbers in PL 115-31, compared to fiscal 2016:

**LWCF FEDERAL:** The fiscal 2017 law contains an appropriation of \$188.8 million, compared to a fiscal 2016 appropriation of \$226.9 million.

Here is the agency-by-agency LWCF distribution: the Bureau of Land Management (BLM) is to receive \$31.4 million compared to \$38.6 million in fiscal 2016; the Fish and Wildlife Service (FWS) is to receive \$50 million compared to \$58.5 million; the Park Service is to receive \$42 million compared to \$53.7 million; and the Forest Service is to receive \$54.4 million compared to \$64.4 million.

**LWCF STATE:** The fiscal 2017 law contains an appropriation of \$110 million, or the same as the \$110 million in fiscal 2016.

**PARK SERVICE OPERATIONS:** The fiscal 2017 law contains an appropriation of \$2.425 billion, or \$29 million more than the fiscal 2016 appropriation of \$2.396 billion.

**CENTENNIAL CHALLENGE GRANTS:** The fiscal 2017 law contains an appropriation of \$20 million, or \$5 million more than the \$15 million in fiscal 2016.

**PARK SERVICE RECREATION AND PRESERVATION:** The fiscal 2017 law contains an appropriation of \$62.6 million, the same as a fiscal 2016 appropriation of \$62.6 million.

**NATIONAL HERITAGE AREAS:** The fiscal 2017 law contains an appropriation of \$19.8 million, the same as a fiscal 2016 appropriation of \$19.8 million.

**PARK SERVICE CONSTRUCTION:** The fiscal 2017 law contains an appropriation of \$209.4 million, compared to a fiscal 2016 appropriation of \$193 million.

**PARK SERVICE HISTORIC PRESERVATION:** The fiscal 2017 law contains an appropriation of \$80.9 million, compared to a fiscal 2016 appropriation of \$65.4 million.

SAVE AMERICA'S TREASURES: The fiscal 2017 law contains an appropriation of \$5 million, compared to no money in fiscal 2016.

STATE WILDLIFE CONSERVATION GRANTS: The fiscal 2017 law contains an appropriation of \$82.6 million, compared to a fiscal 2016 appropriation of \$60.6 million.

NATIONAL FOREST SYSTEM: The fiscal 2017 law contains an appropriation of \$1.513 billion, compared to a fiscal 2016 appropriation of \$1.509 billion.

FOREST SERVICE RECREATION: The fiscal 2017 law contains an appropriation of \$264.6 million, just over the fiscal 2016 appropriation of \$261.7 million.

FOREST SERVICE TRAILS: The fiscal 2017 law contains an appropriation of \$77.5 million, the same as a fiscal 2016 appropriation of \$77.5 million.

FOREST LEGACY: The fiscal 2017 law contains an appropriation of \$62.3 million, the same as a \$62.3 million appropriation in fiscal 2016.

BLM RESOURCE MANAGEMENT: The fiscal 2017 law contains an appropriation of \$1.095 billion, compared to a fiscal 2016 appropriation of \$1.073 billion.

BLM RECREATION MANAGEMENT: The fiscal 2017 law contains an appropriation of \$71.7 million, compared to a fiscal 2016 appropriation of the same, \$69.5 million.

NATIONAL LANDSCAPE CONSERVATION SYSTEM: The fiscal 2017 law contains an appropriation of \$36.8 million, the same as a fiscal 2016 appropriation of \$36.8 million.

FWS REFUGE MANAGEMENT: The fiscal 2017 law contains an appropriation of \$483.9 million, compared to a fiscal 2016 appropriation of \$481.4 million.

## **Infrastructure bill has lots of fans, but no money yet**

In fits and starts the House and Senate are beginning to address the possibility of a big infrastructure bill this year.

Most recently, on May 16 and 17 the Senate Environment and Public Works (EPW) Committee held hearings on where to get money to pay for a bill and what to do about the nation's roads.

Money is still the big problem, if President Trump and Congress are to put together a trillion-dollar initiative. The early betting had held Congress would use a combination of repeal of the ObamaCare health program and tax reform to supply the money. But both of those initiatives for the moment are at best problematic.

At an EPW hearing on money May 17 Los Angeles Mayor Eric Garcetti put in a plug for a U.S. Conference of Mayors proposal for a \$1 trillion infrastructure plan. It includes \$259.2 million in surface transportation projects.

At bottom, said Garcetti, chair of the conference's Infrastructure Task Force, federal money is a top priority. "But for the U.S. to have a robust infrastructure we all envision, and to be competitive at the global stage, a significant amount of new federal funding is necessary. This is a must," he said.

EPW subcommittee on Transportation Chairman Jim Inhofe (R-Okla.) was noncommittal on where the money should come from at the May 16 hearing. "Though not all ideas will work everywhere, all options should be on the table and we should incentivize our non-federal partners to pursue them," he said.

The easy part of a trillion-dollar infrastructure program is identifying the projects. The hard part is finding the money for them.

Of really big importance President Trump, who campaigned on a trillion-dollar infrastructure program, is expected to roll out a fiscal year 2018 budget request May 23 that will outline his recommendations for paying the bill.

May 19, 2017

Page 21

is expected to propose \$200 billion in public investments with the rest paid for from tax incentives.

Last week Sen. Ron Wyden (D-Ore.), ranking Democrat on the Senate Finance Committee, put a shot across the Trump private-public partnership plan's bow, calling for more federal spending and less private spending.

He wrote Secretary of Treasury Steven Mnuchin May 11, "I am no opponent of private investment in infrastructure - with proper oversight on the right kinds of projects, private sector expertise can help accelerate the delivery of high quality public infrastructure. But (public-private partnerships) are not a magical solution to a massive, long-running problem - especially if they are only used to shift costs by levying tolls."

Wyden has signed on to a trillion-dollar Senate Democratic infrastructure proposal that includes \$210 billion for road construction (presumably with some money going to trails and recreation facilities). In addition the Democrats would set aside \$20 billion for public lands and Indian infrastructure, not just for roads.

Say the Senate Democrats, "With this investment of federal funding we will support construction, maintenance and restoration projects at the four Federal land management agencies." Those agencies are NPS, the Forest Service, the Bureau of Land Management, and the Fish and Wildlife Service.

As most players know the problem with infrastructure programs is money. For decades various administrations and Congressional leaders from both parties have sought revenues for surface transportation, with limited success. On Dec. 4, 2015, President Obama did sign into law (PL 114-94) a surface transportation bill that provides outdoor programs with more than \$850 million per year for five years.

The House and Senate generated that legislation only after identifying "gimmicky" funding sources beyond the Highway Trust Fund, which is barely contributing half of the needed \$300 billion.

So now comes the Trump administration with its far broader and far more ambitious infrastructure program. Once again the Highway Trust Fund is expected to help out, but most observers believe Congress will rely mostly on tax reform revenues, such as repatriation from domestic companies operating overseas.

If and when an infrastructure bill is put together, it holds the potential for significant park and recreation assistance.

**NPS Legacy Act:** For instance, four senators led by Sen. John Portman (R-Ohio) introduced legislation (S 751) March 28 that would establish an ambitious fund that would grow to as much as \$500 million per year for Park Service maintenance.

The money would be drawn from revenues from mineral development and would not be subject to appropriations. However, House and Senate Appropriations Committees would have to sign off on annual priority project lists submitted by NPS.

**Recreation industry proposal:** The recreation industry in February asked Congress to include a recreation title in any infrastructure legislation it develops this year, with an emphasis on private investment.

The industry representatives, organized as the Outdoor Recreation Industry Roundtable (ORIR), is calling on Congress to:

- (1) embrace private investments such as those that have in the past paid for

the construction of Park Service lodges and national forest ski resorts;

(2) allocate infrastructure bank investments to recreation projects for lodging, marinas, campgrounds, etc.;

(3) invest revenues from federal recreation fees in projects; and

(4) approve more public-private initiatives such as the Park Service Centennial Challenge program, which matches private contributions to the national parks with federal appropriations

ORIR members include the National Ski Areas Association, the National Marine Manufacturers Association, the International Snowmobile Manufacturers Association, the American Sportfishing Association and the Outdoor Industry Association, to name a few.

### **Huge gains in rec economy come mostly from methodology**

As we duly noted in the last issue, the contribution of outdoor recreation to the nation's economy has jumped by \$243 billion in the last few years, according to the Outdoor Industry Association.

But that increase isn't attributable so much to more outdoor recreation spending per capita as it is to changes in methodology in the report, according to a representative of the association.

That is, the researchers added several recreational pursuits that were not in a 2013 report.

"The report includes spending on additional outdoor activities, such as horseback riding, skateboarding, scuba diving, running (three-plus miles) and surfing, that adds to the overall spending on outdoor recreation in the new study," said Cory Combs of the Sunshinesachs public relations firm.

In addition researchers included entrance fees and recreational event spending to the total.

Still, even without those additions recreational spending increased over the last five or so years. "If you omit the additional activities and account for inflation since 2011, spending has grown 2.2 percent annually since the previous report," said Combs.

That 2.2 percent increase was driven in part because "in 2016, Americans were taking more vacations due to the lowest gas prices in a decade," he said.

Whatever the computation outdoor recreation has hit the big time as a contributor to the national economy.

When the Outdoor Industry Association published a landmark report in 2013 on the impact of outdoor recreation on the economy, it was a game-changer. Republican and Democratic Congressmen and state officials all cited the report on almost a daily basis to boost the industry in their jurisdictions. And to support policies that abet outdoor recreation.

Now the association has upped the ante with its new report showing outdoor recreation contributes more to the economy than all other industries except health care and financial services. Viewed another way outdoor recreation contributes almost three times as much to the economy as does the energy industry - \$887 billion compared to \$304 billion.

The association intends to use that power to advocate for protection of the nation's lands and waters. Amy Roberts, executive director of the group, expressed alarm about President Trump's April 26 executive order directing a review of 25 national monument designations.

"We are deeply concerned about the order and our hope is that no one seeks to roll back or dilute over 100 years of history and protection for our nation's public lands through the Antiquities Act," she said. "Monuments, many of which have become national parks, have created economic prosperity and jobs in local communities for decades."

The Outdoor Industry Association report is available at:  
[https://outdoorindustry.org/wp-content/uploads/2017/04/OIA\\_RecEconomy\\_FINAL\\_Single.pdf](https://outdoorindustry.org/wp-content/uploads/2017/04/OIA_RecEconomy_FINAL_Single.pdf).

## Notes

**NPS, FS law enforcement officers fewer.** The environmental group Public Employees for Environmental Responsibility (PEER) says in two new reports that the number of police officers in the Park Service and Forest Service has decreased significantly in the last six years. In a report May 9 PEER said the number of park police officers has dropped from 652 in 2010 to 583 in 2016, that despite a surge in visitation. In a report May 15 PEER said the number of Forest Service law enforcement officers in the same period shrunk from 635 to 526. Said PEER Executive Director Jeff Ruch, "The U.S. Park Police are at a low ebb while facing a rising tide. In recent years, this force has not had the personnel to match its mission and that gap is only growing larger." PEER said anticipated Trump budget cuts could accelerate the reductions in police. For its part the Park Service May 16 paid homage to the Park Service rangers and police who have died in the line of duty. "Statistics show that every 53 hours, an officer in the United States is killed in line of duty. It is extremely noble to voluntarily take an oath to place others above yourself," said Charles Cuvelier, NPS Law Enforcement, Security, and Emergency Services Division chief. "Our rangers face risk every day as they protect the nation's most treasured natural and cultural resources. Those who have fallen while honorably serving our country will not be forgotten." Both PEER reports are available at: <http://www.peer.org>.

**Boundary Waters mining reversal?** Rep. Rick Nolan (D-Minn.) is reportedly asking Interior Department officials to consider opening the way for a massive copper and nickel mine near the Boundary Waters Canoe Area Wilderness in Minnesota. In December the Obama administration denied two applications for leases that cover less than 5,000 acres for the Twin Metals Minnesota company. The Obama administration also said it would withdraw 230,000 acres of the 1.09 million-acre watershed for two years and would consider a 20-year withdrawal of the 230,000 acres. Although the mine and the wilderness are located on Forest Service land, the Interior Department and its Bureau of Land Management regulate leases and have authority to withdraw land. Now Rep. Nolan is asking the Trump administration to reverse all those initiatives, the Backcountry Hunters and Anglers said May 12. Nolan made an initial plea to the Trump administration in February, infuriating his fellow Democrat Rep. Betty McCollum (D-Minn.) In announcing the rejection of the leases in December Secretary of Agriculture Tom Vilsack said the Obama administration was motivated by the damage the mine could do to the \$45 million per year recreation economy in the area. Backcountry Hunters and Anglers Upper Great Lakes Outreach Coordinator Will Jenkins said, "Minnesotans – including hunters, anglers and outdoor recreationists – have made clear the value of the Boundary Waters, of fish and wildlife, and of our treasured public lands traditions. That Congressman Nolan would attempt to dismiss these interests and jeopardize a crown jewel of America's wilderness system shows where his loyalties lie."